REPORT

FROM THE

SELECT COMMITTEE

ON

JURY SYSTEM (IRELAND);

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

Ordered, by The House of Commons, *to be Printed,*
26 *June* 1874.

Tuesday, 24th March 1874.

Ordered, THAT a Select Committee be appointed to inquire and report on the working of the Irish Jury System before and since the passing of the Act 34 & 35 Vict. c. 65; and whether any and what amendments are necessary to secure the due administration of justice.

Monday, 20th April 1874.

Committee nominated of—

Sir Michael Hicks Beach.	The O'Donoghue.
Marquis of Hartington.	Mr. Mulholland.
Dr. Ball.	Mr. Downing.
Viscount Crichton.	Mr. Verner.
Mr. Law.	Mr. Henry Herbert.
Mr. Plunket.	Mr. Synan.
Mr. O'Reilly.	Mr. Bruen.
Mr. Lopes.	

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

Wednesday, 22nd April 1874.

Ordered, THAT the Committee do consist of 17 Members.

Ordered, THAT The O'Conor Don and Sir Arthur Guinness be added to the Committee.

Thursday, 30th April 1874.

Ordered, THAT the Minutes of the Evidence taken before the Select Committee on Juries (Ireland) in Session 1873, together with the Report, be referred to the Committee.

Thursday, 7th May 1874.

Ordered, THAT Mr. Synan be discharged from further attendance on the Committee.

Ordered, THAT Sir Colman O'Loghlen be added to the Committee.

Friday, 26th June 1874.

Ordered, THAT the Committee have power to report their Opinion, together with the Minutes of Evidence taken before them, to The House.

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REPORT.

THE SELECT COMMITTEE appointed to inquire and report on the working of the IRISH JURY SYSTEM before and since the passing of the Act 34 & 35 Vict. c. 65; and whether any and what amendments in the Law are necessary to secure the due Administration of Justice;——HAVE considered the matters to them referred, and have agreed to the following RESOLUTIONS:—

THAT the Juries (Ireland) Act, 1871, should be amended, but that it is indispensable to the proper administration of justice in Ireland that the system of providing juries should be such as to ensure absolute impartiality in the formation of the panels of jurors.

That in some instances the rating qualification of jurors fixed by the Jurors Act (Ireland), 1871, is too low; and that it should be raised and should in some instances be higher than the qualification fixed in the temporary Act amending the said Act.

That it is desirable to add to the number of persons qualified to serve on juries by qualifying some persons who may not have a rating qualification, such as the Sons of Peers, of Baronets, of Grand Jurors, and of Magistrates, Officers of either the Army or Navy while not on actual service, Freeholders, and Leaseholders.

That collectors of rates and stamp distributors should cease to be exempt.

That publicans should be exempt from service on juries.

That all persons who have been convicted of perjury should be disqualified.

That the lists of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions.

That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the jurors' books, has not worked well, and requires alteration.

That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books: having regard—

(*a*) To the convenience of jurors as to the locality to which they shall be summoned, so that as far as may be the jurors shall be summoned from within the jurisdiction of the Court in which they shall be required to serve.

(*b*) The number of names in the jurors' books; and

(*c*) The number of previous attendances of the jurors;

and that the Sheriff should enter against the name of each juror summoned the date of each summons, and the jurors' attendance, and should, as far as possible, not summon any juror a second time who had served on a jury until he had first summoned all those whose names are on the jurors' book.

That summonses for the attendance of jurors should be served by the constabulary, but with power to the judges of assize, by order, to substitute service by post in any particular venue.

That a right of peremptory challenges in civil cases in the Superior Courts, and in all trials of indictments for misdemeanours and *ex-officio* informations, he allowed to each party to the extent of six challenges.

That the Judge should have power, in criminal as well as civil cases, to order a view.

That all paid officials should be remunerated for the duties performed by them in relation to the Jury Lists according to a fixed rate.

That it is desirable to amalgamate the Jury Lists of counties of cities with those of the counties.

That the occupation of a house, or house and buildings without land, when rated to a certain value, should be a qualification of a juror in counties; such value to he defined for each locality, according to the circumstances of tbe same.

That it is desirable to aholish the Market Juries.

That it is desirable that juries should be selected by ballot from the panel in criminal as in civil trials.

26 *June* 1874.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 30*th April* 1874.

MEMBERS PRESENT:

Mr. Henry Herbert.	The O'Conor Don.
Mr. Bruen.	Sir Michael Hicks Beach.
Mr. Plunket.	Viscount Crichton.
Dr. Ball.	Mr. Downing.
The O'Donoghue.	Mr. Verner.
Mr. Mulholland.	Marquis of Hartington.
Mr. Synan.	

Sir *Michael Hicks Beach* called to the Chair.

The Committee deliberated.

[Adjourned till Thursday, 7th May, at Twelve o'clock.

Thursday, 7*th May* 1874.

MEMBERS PRESENT:

Sir Michael Hicks Beach in the Chair.

The O'Conor Don.	Mr. Verner.
Mr. Plunket.	The O'Donoghue.
Sir Arthur Guinness.	Mr. Mulholland.
Mr. Law.	Mr. O'Reilly.
Mr. Bruen.	Viscount Crichton.
Mr. Downing.	Mr. Lopes.
Mr. Henry Herbert.	Dr. Ball.

Mr. *James Hamilton* and Mr. *Robert Ferguson* were severally examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 11*th May* 1874.

MEMBERS PRESENT:

Sir Michael Hicks Beach in the Chair.

Mr. Law.	Mr. Verner.
Sir Colman O'Loghlen.	Marquis of Hartington.
Mr. Mulholland.	Mr. Henry Herbert.
Mr. Plunket.	The O'Conor Don.
Viscount Crichton.	The O'Donoghue.
Mr. Bruen.	Sir Arthur Guinness.
Mr. Downing.	

Mr. *William Ormsby* and Mr. *J. B. Johnson* were severally examined.

[Adjourned till Thursday next, at Two o'clock.

Thursday, 14*th May* 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Bruen.	Mr. Law.
Dr. Ball.	The O'Donoghue.
Mr. Verner.	Viscount Crichton.
Sir Arthur Guinness.	Sir Colman O'Loghlen.
Mr. Plunket.	Marquis of Hartington.
Mr. Mulholland.	The O'Conor Don.
Mr. Henry Herbert.	Mr. Downing.

Mr. *Henry West*, Mr. *Thomas de Moleyns*, and Master *Burke*, were severally examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 18*th May* 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Law.	Mr. Plunket.
Mr. Henry Herbert.	Mr. Verner.
The O'Donoghue.	The O'Conor Don.
Viscount Crichton.	Mr. Mulholland.
Mr. Bruen.	Marquis of Hartington.
Mr. Downing.	Dr. Ball.
Sir Colman O'Loghlen.	

Mr. *John Leahy* and Mr. *George Bolton* were severally examined.

[Adjourned till Thursday next, at Twelve o'clock.

Thursday, 21*st May* 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Bruen.	Mr. Mulholland.
Mr. Downing.	Mr. Plunket.
Viscount Crichton.	Sir Arthur Guinness.
Sir Colman O'Loghlen.	The O'Donoghue.
Mr. Verner.	Dr. Ball.
Mr. Henry Herbert.	

Mr. *John Leahy* was further examined.

Mr. *James Green*, Mr. *Thomas Boyd*, and Mr. *John Norwood*, were severally examined.

[Committee adjourned till Thursday, 4th June, at Twelve o'clock.

Thursday, 4th June 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Henry Herbert.	Mr. Mulholland.
Mr. Law.	The O'Conor Don.
Mr. Bruen.	Viscount Crichton.
Mr. Plunket.	

Mr. *John Norwood* was further examined.

Mr. *Arthur John Hamill* was examined.

[Committee adjourned till Monday next, at Twelve o'clock.

Monday, 8th June 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Bruen.	Mr. Verner.
Mr. Downing.	Marquis of Hartington.
Mr. Henry Herbert.	Mr. Mulholland.

Mr. Serjeant *Armstrong* and Mr. *Thomas Lefroy* were severally examined.

[Adjourned till Thursday next, at Twelve o'clock.

Thursday, 11th June 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Bruen.	Mr. Mulholland.
Mr. Downing.	Viscount Crichton.
Mr. Plunket.	Mr. Verner.
The O'Conor Don.	Sir Arthur Guinness.
Sir Colman O'Loghlen.	Marquis of Hartington.
The O'Donoghue.	

Mr. *James Murphy* and Mr. *Joseph Burke* were severally examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 15th June 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Mr. Bruen.	Mr. Verner.
Mr. Downing.	Mr. Plunket.
Sir Colman O'Loghlen.	Sir Arther Guinness.
Mr. Mulholland.	Marquis of Hartington.
The O'Donoghue.	Mr. Henry Herbert.

Mr. Baron *Deasy*, Mr. *John Ball Greene*, and Mr. *Charles Keenan*, were severally examined.

[Adjourned till Thursday the 25th June, at Twelve o'clock.

Thursday, 25th June 1874.

MEMBERS PRESENT:

Sir MICHAEL HICKS BEACH in the Chair.

Marquis of Hartington.	Mr. Vernon.
Mr. Law.	Viscount Crichton.
Sir Colman O'Loghlen.	Sir Arthur Guinness.
Mr. Henry Herbert.	Mr. Bruen.
The O'Conor Don.	Mr. Downing.
Mr. O'Reilly.	Dr. Ball.
The O'Donogbue.	Mr. Mulholland.
Mr. Plunket.	Mr. Lopes.

RESOLUTIONS to be proposed by the Chairman, read, as follows:

"1. THAT the Juries (Ireland) Act, 1871, should be amended.

"2. That the rating qualification of jurors fixed by the Jurors Act (Ireland), 1871, is too low; and that it should be raised and should in some instances be higher than the qualification fixed in the temporary Act amending the said Act.

"3. That inasmuch as the character of the residence is a better test of the social position of the occupier than the mere holding of land, it is desirable that one element in the qualification of a juror should be the occupying a house or building rated to a certain value, such value to be defined for each locality according to the circumstances of the same.

"4. That it is desirable to add to the number of persons qualified to serve on juries by qualifying some persons who may not have a rating qualification, such as the sons of peers, of baronets, of grand jurors, and of magistrates, officers of either the army or navy while not on actual service, freeholders, and leaseholders.

"5. That collectors of rates and stamp distributors should cease to be exempt.

"6. That publicans should be exempt from service on juries.

"7. That all persons who have been convicted of perjury should be disqualified.

"8. That the lists of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions.

"9. That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the jurors' books is objectionable.

"10. That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books: having regard—

"(*a*) To the convenience of jurors as to the locality to which they shall be summoned;

"(*b*) The number of names in the jurors' books; and

"(*c*) The number of previous attendances of the jurors in each year;

and that the sheriff should enter against the name of each juror summoned the date of each summons.

"11. That summonses for the attendance of jurors should be served by the constabulary, but with power to the judges of assize, by order, to substitute service by post in any particular venue.

"12. That the right of temporary challenges in civil cases in the Superior Courts, and in all trials of indictments for misdemeanours and informations, be allowed to each party to the extent of six challenges.

"13. That the judge should have power, both in civil and criminal cases, to order a view.

"14. That the collectors of poor rates should be remunerated for the duties performed by them in relation to the jury lists according to a fixed rate.

"15. That it is desirable to amalgamate the jury lists of counties of cities with those of the counties."

RESOLUTIONS to be proposed by Lord *Hartington*, read, as follows:

"1. That it is indispensable to the proper administration of justice in Ireland that the system of providing juries should be such as to preclude all suspicion of partiality in the selection of the persons to serve as jurors.

"2. That

"2. That this Committee approves of the main principles of the Juries (Ireland) Act, 1871, viz., the adoption of a rating qualification for jurors, and of a fixed method of selecting the panel from the jurors' book.

"3. That the Act requires amendment in some of its details.

"4. That the rating qualification for jurors fixed by the Act is in some instances too low.

"5. That the careful revision of the lists previous to the preparation of the jurors' book is a duty of the utmost importance, which should he performed by or with the assistance of persons having local knowledge.

"6. That inasmuch as the system in summoning jurors of invariable adherence to the dictionary order of the names on the jurors' book has heen found to he inconvenient, some other means should be adopted of securing that all jurors whose names are on the book should be summoned in turn."

MOTION made, and Question, That the Resolutions to be proposed by the Chairman be now taken into consideration—(The *Chairman*)—put, and *agreed to.*

Motion made, and Question proposed, "1. That the Juries (Ireland) Act, 1871, should be amended."—Amendment proposed at the end of the Question, to add the words, "but that it is indispensable to the proper administration of justice in Ireland that the system of providing juries should he such as to ensure absolute impartiality in the formation of the panels of jurors"—(Sir *Colman O'Loghlen*).—Question put, That those words be there added.—The Committee divided:

Ayes, 8.	Noes, 7.
Marquis of Hartington.	Mr. Pluuket.
Mr. Law.	Mr. Verner.
Sir Colman O'Loghlen.	Viscount Crichton.
Mr. Henry Herhert.	Sir Arthur Guinness.
The O'Conor Don.	Mr. Bruen.
Mr. O'Reilly.	Dr. Ball.
The O'Donoghue.	Mr. Mulholland.
Mr. Downing.	

Main Question, as amended,—put, and *agreed to.*

Motion made, and Question proposed, "2. That the rating qualification of jurors fixed by the Jurors Act (Ireland), 1871, is too low, and that it should be raised and should in some instances he higher than the qualification fixed in the temporary Act amending the said Act."—Amendment made.—Question, as amended,—put, and *agreed to.*

Motion made, and Question put, "3. That inasmuch as the character of the residence is a hetter test of the social position of the occupier than the mere holding of land, it is desirable that one element in the qualification of a juror should be the occupying a house or building rated to a certain value, such value to be defined for each locality according to the circumstances of the same."—The Committee divided:

Ayes, 4.	Noes, 11.
Viscount Crichton.	Marquis of Hartington.
Mr. Bruen.	Mr. Law.
Dr. Ball.	Sir Colman O'Loghlen.
Mr. Mulholland.	Mr. Henry Herbert.
	The O'Conor Don.
	Mr. O'Reilly.
	The O'Donoghue.
	Mr. Plunket.
	Mr. Verner.
	Sir Arthur Guinness.
	Mr. Downing.

Motion made, and Question, "4. That it is desirahle to add to the number of persons qualified to serve on juries by qualifying some persons who may not have a rating qualification, such as the sons of peers, of haronets, of grand jurors, and of magistrates, officers of either the army or navy while not on actual service, freeholders, and leaseholders,"—put, and *agreed to.*

Motion made, and Question, "5. That collectors of rates and stamp distributors should cease to be exempt,"—put, and *agreed to.*

Motiou made, and Question, "6. That publicaus should bc exempt from service on juries,"—put, and *agreed to.*

Motion made, and Question, "7. That all persons who have been convicted of perjury should be disqualified,"—put, and *agreed to.*

Motion made, and Question proposed, "8. That the lists of jurors should be made out according to petty sessions districts, and that they should be revised at special petty sessions in each district, subject to appeal to quarter sessions."—Amendment proposed to leave out all the words, after the word "revised," in line 2, in order to add the words "At a general sessions of the peace to be holden in the division in which such petty sessions are situate"—(Mr. *Downing*)—instead thereof.—Question put, That the words proposed to be left out stand part of the Question:—The Committee divided:

Ayes, 12.	Noes, 3.
Marquis of Hartington.	Mr. Law.
The O'Conor Don.	Mr. Henry Herbert.
Mr. O'Reilly.	Mr. Downing.
The O'Donoghue.	
Mr. Plunket.	
Mr. Verner.	
Viscount Crichton.	
Sir Arthur Guinness.	
Mr. Bruen.	
Dr. Ball.	
Mr. Mulholland.	
Mr. Lopes.	

Main Question put, and *agreed to.*

Motion made, and Question proposed, "9. That the system, in summoning jurors, of invariable adherence to the dictionary order of the names in the jurors' books is objectionable."—Amendments made.—Question, as amended, put, and *agreed to.*

Motion made, and Question proposed, "10. That the sheriff should be required to distribute the burden of service fairly and impartially amongst all persons whose names are upon the jurors' books: having regard (*a*) To the convenience of jurors as to the locality to which they shall be summoned; (*b*) The number of names in the jurors' books; and (*c*) The number of previous attendances of the jurors in each year; and that the sheriff should enter against the name of each juror summoned the date of each summons."—Amendment proposed to leave out from the first word "That," to the word "books" in line 3, inclusive, in order to insert the words "to ensure the equal distribution of the burthen of service amongst all persons whose names are on the jurors' book, and the impartial selection of the jurors who shall be required to serve on each occasion a fixed method should be prescribed for the formation of the jury panels"—(Mr. *Law*)—instead thereof.—Question put, That the words proposed to be left out stand part of the Question.—The Committee divided:

Ayes, 8.	Noes, 8.
Mr. Plunket.	Marquis of Hartington.
Mr. Verner.	Mr. Law.
Viscount Crichton.	Sir Colman O'Loghlen.
Sir Arthur Guinness.	Mr. Henry Herbert.
Mr. Bruen.	The O'Conor Don.
Dr. Ball.	Mr. O'Reilly.
Mr. Mulholland.	The O'Donoghue.
Mr. Lopes.	Mr. Downing.

Whereupon the Chairman declared himself with the *Ayes.*

Another Amendment proposed in line 3, after the word "regard" to leave out all the words to the word "summoned," in line 4, inclusive—(Mr. *Downing*).—Question put, That the words proposed to be left out stand part of the Question.—The Committee divided:

Ayes, 8.	Noes, 7.
Mr. Plunket.	Marquis of Hartington.
Mr. Verner.	Mr. Law.
Viscount Crichton.	Mr. Henry Herbert.
Sir Arthur Guinness.	The O'Conor Don.
Mr. Bruen.	Mr. O'Reilly.
Dr. Ball.	The O'Donogbue.
Mr. Mulholland.	Mr. Downing.
Mr. Lopes.	

Amendment made.

Another Amendment proposed, at the end of the Question, to add the words "and should, as far as possible, not summon any juror a second time who has served on a jury until he had first summoned all those whose names are on the jurors' book"—(The *O'Conor*

O'Conor Don).—Question put, That those words be there added.—The Committee divided:

Ayes, 8.	Noes, 7.
Marquis of Hartington.	Mr. Plunket.
Mr. Law.	Mr. Verner.
Sir Colman O'Loghlen.	Viscount Crichton.
Mr. Henry Herbert.	Sir Arthur Guinness.
The O'Conor Don.	Mr. Bruen.
Mr. O'Reilly.	Dr. Ball.
The O'Donoghue.	Mr. Mulholland.
Mr. Downing.	

Main Question, as amended,—put, and *agreed to.*

Motion made, and Question proposed, "11. That summonses for the attendance of jurors should be served by the constabulary, but with power to the judges of assize, by order to substitute service by post in any particular venue."—Amendment proposed to leave out the word "constabulary" in line 2—(Mr. *Downing*).—Question put, That the word "constahulary" stand part of the Question.—The Committee divided:

Ayes, 13.	Noes, 3.
Marquis of Hartington.	Mr. Law.
Mr. Henry Herbert.	Sir Colman O'Loghlen.
The O'Conor Don.	Mr. Downing.
Mr. O'Reilly.	
The O'Donoghue.	
Mr. Plunket.	
Mr. Verner.	
Viscount Crichton.	
Sir Arthur Guinness.	
Mr. Bruen.	
Dr. Ball.	
Mr. Mulholland.	

Main Question put, and *agreed to.*

Motion made, and Question proposed, "12. That the right of temporary challenges in civil cases in the Superior Courts, and in all trials of indictments for misdemeanours and informations, be allowed to each party to the extent of six challenges."—Amendments made.—Question, as amended, put, and *agreed to.*

Motion made, and Question proposed, "13. That the judge should have power, both in civil and criminal cases, to order a view."—Amendments made.—Question, as amended, put, and *agreed to.*

Motion made, and Question proposed, "14. That the collectors of poor rates should be remunerated for the duties performed by them in relation to the jury lists according to a fixed rate."—Amendment made.—Question, as amended, put, and *agreed to.*

Motion made, and Question proposed, "15. That it is desirable to amalgamate the jury lists of counties of cities with those of the counties,"—put, and *agreed to.*

Motion made, and Question proposed, "That the occupation of a house, or lease and buildings without land, when rated to a certain value, should be a qualification of a juror in counties, such value to be defined for each locality according to the circumstances of the same"—(Mr. *Bruen*)—put, and *agreed to.*

Motion made, and Question put, "That the panel of jurors should be called over in open court at the commencement of the sitting, or as soon after as may be convenient, and a fine recorded against all jurors who do not attend and answer to their names, or furnish sufficient evidence of their inability so to do, with power to those so fined to apply to the next quarter sessions for a remission of the fine, or showing satisfactory grounds for their non-attendance"—(Mr. *Law*).—The Committee divided.

Ayes, 6.	Noes, 8.
Marquis of Hartington.	Mr. Plunket.
Mr. Law.	Mr. Verner.
Mr. Henry Herbert.	Viscount Crichton.
The O'Conor Don.	Sir Arthur Guinness.
Mr. O'Reilly.	Mr. Bruen.
The O'Donoghue.	Mr. Downing.
	Dr. Ball.
	Mr. Mulholland.

Motion made, and Question proposed, "That it is desirable to abolish the market juries" —(Sir *Colman O'Loghlen*)—put, and *agreed to*.

Motion made, and Question proposed, "That it is desirable that juries should be selected by ballot from the panel in criminal as in civil trials"—(Mr. *Downing*)—put, and *agreed to*.

Ordered, To report the foregoing Resolutions to the House, together with the Minutes of Evidence, and an Appendix.

EXPENSES OF WITNESSES.

NAME OF WITNESS	PROFESSION OR CONDITION.	From whence Summoned.	Number of Days absent from Home, under Orders of Committee.	Expenses of Journey to London and Back.	Allowance during absence from Home.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Mr. James Hamilton	Queen's Counsel - -	Dublin - -	4	- nil -	12 12 -	12 12 -
Mr. J. B. Johnson	Sub-Sheriff, County Cork	Cork - - -	5	6 2 -	5 5 -	11 7 -
Mr. Henry West -	Queen's Counsel - -	Dublin - -	7	5 9 -	22 1 -	27 10 -
Mr. Thomas De Moleyns.	Queen's Counsel - -	Dublin - -	4	5 9 -	12 12 -	18 1 -
Mr. R. Ferguson -	Queen's Counsel - -	Dublin - -	3	5 9 -	9 9 -	14 18 -
Mr. W. Ormsby -	Sub-Sheriff, County Dublin (Solicitor).	Dublin - -	7	6 9 -	14 14 -	21 3 -
Mr. Charles G. Burke.	Master, Court of Common Pleas, Dublin.	Dublin - -	3	- nil -	3 3 -	3 3 -
Mr. George Bolton	Crown Solicitor - -	Dublin - -	4	5 9 -	4 4 -	9 13 -
Mr. James Greer -	Crown Solicitor - -	Omagh - -	8	5 15 -	8 8 -	14 3 -
Mr. Arthur J. Hamill.	Queen's Counsel - -	Dublin - -	3	5 9 -	9 9 -	14 18 -
Mr. Serjeant Armstrong.	Queen's Counsel - -	Dublin - -	4	5 9 -	12 12 -	18 1 -
Mr. Thomas Lefroy	Queen's Counsel - -	Dublin - -	4	5 9 -	12 12 -	18 1 -
Mr. James Murphy	Queen's Counsel - -	Dublin - -	3	5 9 -	9 9 -	14 18 -
Mr. Joseph Burke -	Solicitor - - -	Dublin - -	3	5 9 -	6 6 -	11 15 -
Right Hon. Baron Deasy.	Baron of Court of Exchequer, Ireland.	Dublin - -	4	5 9 -	4 4 -	9 13 -
Mr. Charles Kernan	Clerk of Peace for Dublin	Dublin - -	4	5 9 -	4 4 -	9 13 -
				TOTAL - - - £.		229 9 -

MINUTES OF EVIDENCE.

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MINUTES OF EVIDENCE.

Thursday, 7th May 1874.

MEMBERS PRESENT:

Sir Michael Hicks Beach.
Dr. Ball.
Mr. Bruen.
Viscount Crichton.
Mr. Downing.
Sir Arthur Guinness.
Mr. Henry Herbert.
Marquis of Hartington.
Mr. Law.
Mr. Lopes.
Mr. Mulholland.
The O'Conor Don.
The O'Donoghue.
Mr. O'Reilly.
Mr. Plunket.
Mr. Verner.

SIR MICHAEL HICKS BEACH, BART., IN THE CHAIR.

Mr. JAMES HAMILTON, called in; and Examined.

Mr. *Plunket.*

1. YOU were examined before this Committee last year, were you not?—Yes.

2. Since then have you had any experience at the assizes or quarter sessions of the working of the Jury Act of last year?—Yes, very considerable experience; I think I have attended two assizes and three quarter sessions.

3. Will you be kind enough to tell the Committee your experience at the assizes?—We have not had quite the same ridiculous exhibitions that we had prior to the recent change in the law, but I have no hesitation in saying that, as a rule, the jurors are still quite inadequate to discharge their duties, notwithstanding that very great care has been exercised, especially on the Crown side of the court by the Crown solicitor, to exclude unfit persons in every important case; probably I might be allowed to illustrate what I mean to convey by instances which have occurred. There were three very important trials for murder. The first was the trial of a blind man for a murder in Cavan. The Attorney General prosecuted. That case involved no agrarian, or party or political feeling; yet, in the presence of the Attorney General, the Crown solicitor set aside 56 jurors out of the panel, which I think is a complete proof that the panel was composed of men utterly unfit to be on it. Then there was the trial of Montgomery for murder in Omagh, in which the Attorney General also prosecuted. That was a trial which involved no political, or religious, or agrarian consideration. Montgomery was a police officer, who had murdered a banker's clerk. I forget the exact number of the jury which the Crown solicitor found it necessary to set aside, but I think it was about 120.

Mr. *Plunket*—continued.

Mr. *Downing.*

4. That was on the last trial, was it not?—Yes, that was on Montgomery's last trial; there was a third trial in the county of Donegal, and I know that a very large number of the jurors were also set aside by the Crown solicitor.

Mr. *Bruen.*

5. Do you remember the number?—No, I cannot tell the number; but you could easily obtain accurate returns of the number set aside in order to get anything like a fair trial.

Mr. *Law.*

6. What was the name in that last case?—In the Donegal case it was persons named Macallog. That was rather a remarkable case; there was a shocking murder committed, and it must have been committed by the prisoners; the woman was shot down in the presence of her husband and children, and there was an attempt made to murder the whole family. The prisoners were two brothers; that was an agrarian crime, and the evidence was as plain as daylight. They were acquitted of murder by one jury, and we then indicted them for an attempt to murder the husband (they had succeeded in murdering the wife). It was precisely the same transaction, precisely, and the same evidence, but by a large exercise of the power of the Crown to make jurors stand aside, the second jury convicted of the attempt to murder, on the same evidence as that on which the

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the former jury had acquitted of the murder. A clearer case never was proved, and they were sentenced to penal servitude for life.

Mr. *Plunket.*

7. What is your experience of juries on the civil side of the court at those assizes?—They are very unintelligent, and very inferior to the juries under the old system, particularly special juries; in short, in my opinion (and I have carefully noted the facts that come under my notice), there is no trial by jury in Ireland at all, or at least there would not be if there was any strain on the system. In ordinary cases on the civil side of the court, where no passion or prejudice exists, the jurors, who are many of them very unintelligent, do just what the judges direct, and in that case we might as well have no jury at all. The verdict is the verdict of the judge. In cases where any agrarian or other disturbing element comes in, there is generally speaking no finding, I know from very intimate knowledge of the counties on my circuit, especially in counties like Donegal, and counties where the population is scattered, where men are principally engaged in cattle dealing, and where they have to go long distances to fairs, they are most of them under very great alarm if they are men of low position from Ribbon and other societies. Many of them, I know from my own knowledge, sympathise with those societies, and they look upon them as a very useful check on what they call landlord oppression, and that kind of thing. You have thus those two classes of persons which you reach by the present system, persons who sympathise with and are afraid of those societies, and who will not do their duty as jurors; I think the fact is perfectly notorious.

8. Do you think that those evils exist to a greater extent since the Act of last year was passed?—I am sure that they do.

9. Will you kindly inform the Committee what is your experience of the working of that Act of Parliament with regard to quarter sessions?—I have the good fortune to belong to a very good county. The crime in Sligo is scarcely worth talking about; the crimes tried before me at the quarter sessions consists generally of petty larcenies of trifling articles, and I find that jurors are willing enough to convict in petty larceny cases. They are principally farmers, and if a person is indicted for stealing a sheep or a cow, they are very willing to convict indeed; on the whole, my experience is not very great at quarter sessions, but unquestionably I have had juries trying cases who have returned most absurd verdicts, and who have occasionally disagreed under most ridiculous circumstances. A couple of the jury got drunk in one case (as appeared afterwards), and they would not agree.

The O'Conor Don.

10. Is that since the amended Act was passed?—Yes, that was last sessions; I saw it when they came out of the jury-room. I kept them in as long as I could. One of them said that he wished to leave the whole thing to my own honour.

Mr. *Plunket.*

11. Do you suggest any other alteration in the system of summoning juries in Ireland?—I would modify slightly the recommendation

Mr. *Plunket*—continued.

which I made on the former occasion. I think I said I thought it was possible that the chairman could revise the list as well as anybody else; but from having actually done it since, and carefully considered what I should be able to do even if I were invested with the most inquisitorial powers, I am now perfectly satisfied that the revision by the chairman would be altogether ineffectual. I think the better plan would be the revision which is proposed in the English Bill of the late Attorney General, and in the present English Bill of Mr Lopes; it is also recommended by Judge Morris, and I think also Judge Lawson, and by Mr. Robinson, the chairman of Cavan, who is a very experienced gentleman, that is to say, that the revision should take place at special sessions before the justices; that would be a much more effective revision than any which could take place before a chairman; the reason is obvious. The justices, as a rule, and especially the resident magistrates, are acquainted with the characters of nearly all persons within the petty sessions district; the resident magistrates are informed, as a rule, by the police of the character of those people. If they were invested with the power of striking off jurors for any sufficient reason, the power which Serjeant Armstrong recommends the chairman should have, I think a better revision of the lists could be carried out than by the chairman of the county, who knows nothing about the persons as a rule. I could hardly strike off one juror of my own knowledge, whereas, the county magistrates on the contrary, do know the characters of the men; they know the habitual drunkards; they know the men who are in the habit of being brought before them for breaches of the peace, and they also know the men who belong to secret societies. They know those things usually of their own knowledge as country gentlemen, and if they obtained the power recommended by Serjeant Armstrong, they would strike the men off the list.

12. You refer to the resident magistrate; do I understand you to suggest that he should always sit on the bench on the occasion of this business?—I think it would be desirable, because some people hint that the country people have not sufficient confidence in the local magistrate. I do not agree in that myself, but there is a great deal of confidence reposed in the resident magistrate as a perfectly impartial person appointed by the Government; besides, from the special sources of information which he has, he would be very useful.

13. What is your experience of the carrying out, or endeavouring to carry out, the revision as at present at the court of quarter sessions?—I can strike off those men that are declared to be disqualified by the Act of Parliament, illiterate persons, blind men, deaf men, and all that kind of thing; but it would be leading the Committee altogether astray, to allow them to suppose that the existence merely of defects of that kind, or ignorance, is the difficulty which we have to deal with in carrying out the administration of the law in Ireland; the difficulty is that we have to deal with a population who are largely disaffected, and very much under the terror of those secret societies. The fact that you are obliged to keep coercion Acts hovering over the country, is proof of that, and if you make the machinery for the administration of the law worse, as this Act has done,

Mr. *Plunket*—continued.

done, you will never get rid of that unfortunate necessity.

14. Does your experience lead you to believe that if you were authorised to do so, you would be able to put jurors off the list, to whom that exception which you have just referred to, might be supposed to apply?—I do not think you would to a sufficient extent, and I will tell you why. Suppose you suspect a man of belonging to any secret society, he is absent from the revision of your list; I have thought over this while I was revising the list myself, and I think it would be hardly a fair thing to go in his absence into an inquiry whether he belonged to an illegal society or not, and you would find witnesses very unwilling to come forward and make those charges behind his back, although the magistrate who did know him might be fully convinced that he did belong to such a society. It would also be very difficult to get witnesses to come forward and state in open court in the person's absence that he was an habitual drunkard; so that, although theoretically you might devise very good machinery, it would fail in practice. I think the revision of the list by magistrates would of course do something, and be very useful, but it would not be at all a sufficient remedy, in my opinion, for the evils inherent in this self-acting Bill.

15. Your suggestion is, that the jury list should be prepared at the sessions by the local magistrates, assisted by the stipendiary magistrates?—Yes, certainly; it is in both the Bills before the Committee, and it is recommended by men of great experience, especially Judge Morris, who knows Ireland, perhaps, better than anyone else I am acquainted with.

16. Then, having got the jury list in that way, what is your suggestion with regard to forming the panel?—Unquestionably that forming of the panel should be left to the sub-sheriff, under the form of precept recommended by Judge Morris and introduced by Sir John Young; and I would add, the additional safeguard suggested by Chief Justice Whiteside, that the high sheriff should be made responsible for the panel, and should on oath declare that he has examined it, and that it is, in his opinion, a fair and impartial panel. I am certain you would then get infinitely better and fairer juries than you do at present, and juries free from all reasonable suspicion. Further, you would also accomplish this, which would be in my opinion an enormous advantage. You would prevent what I consider to be the most unfortunate spectacle, namely, that of the Crown solicitor setting aside jurors, those jurors, generally speaking, belonging to the same religion; it being charged, as I know it is, and has been charged, and was charged, especially in the Fenian trials, that they were set aside, not on account of sympathy with the accused, or as being under alarm, but on account of their religion; that charge was no doubt untrue, but still it is made, and the people of the county see it done. And that, in my opinion, has a tendency to cast far greater suspicion of unfairness on the Executive than any preparation of the panel by the sub-sheriff, who has nothing to do with the Executive, who is an independent person, as a rule, and who knows the character of everybody in the county. I have looked over the whole of the evidence which was given on the former occasion; no witness has stated that any suspicion

Mr. *Plunket*—continued.

of partiality was well founded; on the contrary, most of the witnesses have stated that they did not know that the suspicion actually existed, while they believed that the suspicion was unfounded.

Mr. *Downing.*

17. You now refer to the sub-sheriff, do you not?—Yes; nearly all the witnesses have stated that the suspicion was unfounded, and only two or three have stated that it existed at all.

Mr. *Plunket.*

18. Then I understand you to be of opinion that no matter how carefully the jury list might be settled at the jury sessions, as you suggested, by the local magistrates, aided by the resident magistrate, you would still think it necessary after that, that the panel should be prepared by some person who should have the power of further sifting it?—Yes, I am sure of that. Beyond that, every witness examined on the former occasion insists that there should be a power of selection somewhere or other. I say the best person is the high sheriff of the county, assisted by the sub-sheriff.

19. When you say selection, what do you mean by that?—That is the term used by nearly all the witnesses, beginning with Mr. Serjeant Armstrong.

20. It has been suggested that instead of the sheriff being armed with the power of selection, he should be armed with the power of relieving certain jurors from serving, or of expurgating the names of certain jurors from serving whom he did not think suitable men. Do you attach any importance to that distinction?—Let me refer the Committee to an answer given by Judge Morris at Question 3021 of the evidence of last year, in which he stated the form of precept which he would direct to the sheriffs, and that answer will explain exactly the power I would give to the sheriff, and I find that recommended by a great many other witnesses. Mr. Justice Morris was asked, "I understand you to be of opinion that, after the book had been as thoroughly expurgated as possible, it should be the duty of the sheriff to summon jurors from it in rotation," and he replied, "In rotation, he having the power even still, from the jurors' book, of not summoning persons who he did not think ought to be summoned, and who may have remained on either from inadequate revision or from other causes, from having died or emigrated. In fact, I think the precept of the sheriff should follow this form, which I find in a Bill introduced in the year 1856, I presume, by Mr. Justice Fitzgerald and Mr. Justice Keogh. If it was not by Mr. Justice Keogh, it was by Mr. Justice Fitzgerald, for it is by the Attorney General and the Solicitor General. This form of precept struck me as an admirable one, 'that the sheriff shall be directed to return a sufficient number of the most competent persons named in the jurors' book, selecting, so far as practicable, but having regard to competence, such jurors as shall not have been summoned at preceding assizes.' Now that explains what I mean, that the sheriff should go through the whole book, but that he should select, as far as possible, only competent persons, instead of making this a self-acting unintelligent machinery to put on everybody, bad or good. I would adopt this form of precept, and make the sheriff have regard to the competence of the per-

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sons, and give him the power of omitting improper or incompetent men, but at the same time doing it in such a way that the burden of serving juries should be as widely distributed as possible"

21. Will you kindly finish reading that answer of Judge Morris?—Yes; it goes on, "that is, that he should go through the whole book, but selecting, as far as practicable, only competent persons. That Bill, in my opinion, hits the happy mean. As to the alphabetical plan, I would take the liberty of saying I do not see how it can stand at all. It appears to me to lead to such practical absurdities——"

22. Do you agree in that part of Mr. Justice Morris' answer?—Yes, altogether, and every witness I have heard agrees in that principle. I will tell you another advantage which you would gain from giving this power to the sheriff; in my opinion it is important, for the sake of the jurors themselves, to have as many jurors on the list as you possibly can; and also I think it is important to interest as many people as you can in the administration of the law. Now, if you deprive the sheriff and every other person of these reasonable powers, the only remedy is to raise the qualification for jurors, as Mr. Serjeant Armstrong stated, to an absolutely impossible degree. I mention him because there is no person in Ireland who has had so much experience on both sides of the court; and yet, when he is asked to devise a remedy, his remedy is this, to raise the qualification of common jurors to a rating of 50*l.*; and Mr. Downing immediately shows him that he would get no jurors at all at this rate; but in addition to that, he suggests that there should be a most extraordinary power, an inquisitorial power, given to the chairman of the court of quarter sessions to retire into a private room, if necessary, with the constabulary of the county, and there out of even the 50*l.* list strike off anybody that the constabulary suggested was not a proper person. Those extreme remedies are proof to my mind that when you part with what appears to be a reasonable power in the sheriff you find no practical mode anywhere of having a sufficient number of competent jurors. Giving that power to the sheriff, I should be satisfied even with the 20*l.* rate, because you will find many intelligent persons, and very well-disposed persons under that rating. You will find many incompetent and ill-disposed persons, of course; but if you give the sheriff or some other officer the power to exclude them, you have still a very wide area of selection for very good jurors.

23. Do you think if your view was adopted with regard to forming the jurors' lists, and afterwards forming the panel, that a qualification of 20*l.* would be sufficient?—I would be satisfied with that; I think it is very desirable to have as little inconvenience imposed on jurors as possible, and to interest as many people as possible in the administration of the law.

24. But on the whole your experience of the working of the Act of last year leads you to suppose that it is quite an inadequate amendment of what we know as Lord O'Hagan's Act?—Quite so; it would break down upon the very first strain, and in case of any agitation or disturbance you would have to suspend trial by jury altogether. We have had a very quiet couple of years, perhaps owing to that coercive power being kept hovering over the people. I

Mr. *Plunket*—continued.

think I have proved that by the necessity imposed on the Crown solicitor to set aside so many jurors, but in case of agitation he would not venture to exercise that power. They talk about packing a jury, but there never was such packing, in the good sense of the term, as the packing by the Crown now, and that power you could not exercise in excited times.

25. Have you any other suggestions to make to the Committee?—The special jurors, I may state, are greatly deteriorated.

Chairman.

26. Does that refer to the time which has passed since you were last examined on this subject?—Yes, they are still very inferior, and I would propose to adopt Mr. Serjeant Armstrong's suggestion to return to what is called the old system of special jurors.

Mr. *Downing.*

27. What number of Mr. Serjeant Armstrong's evidence is that in?—I think it is at Question 806; he spoke of the great deterioration of special juries in Ireland. Nobody can doubt who has gone the circuits that the special juries are deteriorated very much. We used to have in the city of Londonderry as good a jury as could possibly be obtained; merchants and intelligent men, to whom you might trust any case, but now it has fallen off very much. I would return to the old system which Mr. Serjeant Armstrong describes, that of the sheriff returning 48 men, and each party striking off 12, leaving 24, out of which the first 12 who answered to their names should be selected.

28. That only refers to civil actions, does it?—That only refers to civil actions; I would not suggest that the Crown should have a right to try a prisoner by a special jury; it would raise an outcry if you were to do that, and it would be said that you were trying men of a low class by a hostile class, whose prejudices and feelings were against them; it would be only in extreme cases that I would try a prisoner by a special jury.

29. With regard to those three cases which you have called the attention of the Committee to, I think you have stated that in the case of the blind man there was a conviction?—Yes.

30. And in the case of Montgomery there was a conviction?—Yes, but there had been a previous disagreement.

31. In Montgomery's case there were two disagreements, and upon the third trial he was convicted, was he not?—Yes; and I dare say that was very much owing to the extraordinary care exercised by the Crown solicitor in setting aside the jurors.

32. Do you not think that the case of Montgomery was a case in which the jurors might have fair doubts?—I thought it a very plain case.

33. But I speak of a juryman who is sworn on his oath; you are the Crown prosecutor, you know?—No, I am not; I am occasionally called in to assist the ordinary Crown prosecutor. I was asked to prosecute in one case, but I got excused.

34. But you will admit that a juryman who is sworn on oath, and hears the whole of the evidence, may take a view of the case very fairly and reasonably different from your own?—Yes, certainly;

Mr. *Downing*—continued.

tainly; but I may say that the questions asked by the jury on that trial showed that they were utterly unintelligent, and did not understand what they were about at all. At the end of one of those trials, it was a case of circumstantial evidence altogether, and after the charge of the judge, which lasted a day and a-half (and perhaps that may have confused them), one of the jury came out after they had retired, and said, "My Lord, can we convict a man of murder when nobody has seen him do it?"

35. That was a very plain question, was it not?—It showed that he did not understand anything of what had taken place.

The O'Conor Don.

36. Was not that under the first Jury Act, and not under the amended one?—It was on the second trial.

Mr. *Law.*

37. Was not the first trial of Montgomery under the old system?—It was on the second trial, as I have said.

38. Was not the first of the three trials under the old system?—Yes.

39. The second trial was under Lord O'Hagan's first Act of Parliament, was it not?—Yes.

40. And he was convicted under the amended Act?—Precisely.

41. The sheriff's power failed the first time?—It did, and the Crown solicitor's powers succeeded in the third case.

Mr. *Downing.*

42. You are aware that on a great many trials of importance, particularly in the north of Ireland, the Crown have exercised the right to put by a large number of jurors?—Yes, they have done so, but never to the same extent within my knowledge, as under this Act of Parliament. In fact, it was rarely exercised on my circuit side until this Act was passed.

43. It has been exercised very largely, has it not?—I know that it has been exercised very largely on Fenian trials, and I think it was necessarily so.

44. When you were examined last year, you rather adopted the general principle of Lord O'Hagan's Bill, did you not?—No, not at all. I approved of the mode of forming the lists, but I disapproved entirely of the alphabetical arrangement.

45. But you do approve of the substitution of the rating qualification for the old one?—That is a necessary change, because the old qualification had nearly disappeared.

46. Your own county, Sligo, is a very quiet one, you say?—Yes, nothing can be better.

47. You find no objection to the jury system there?—I have stated that the cases which I have been trying in Sligo have been of a very trifling character, indeed.

48. Your evidence goes very much to the north of Ireland, does it not?—Yes, beginning at Cavan, and going on to Londonderry.

49. The revision of jurors, which you would recommend now, would be that it should take place before the magistrates at special sessions?—Yes, that would be an improvement, I think.

50. Are you aware that that was the system always—Yes.

51. You would propose to go back to the old system?—Yes, it is adopted in both the English Bills. I should like to have the administration of the law uniform in the two countries.

52. That is your opinion, is it?—That is my opinion.

53. Would you have the examination of the objections to a man's being put on the jury list made on oath?—Yes, I think so.

54. Otherwise you would say, of course, that the revision would be very imperfect?—No, I think not; I think you might trust most of the public functionaries, who would assist you to deal truly. The public functionaries in Ireland do their duty very well; the force of public opinion makes them do so.

55. Do you think that public opinion would tolerate the idea of a policeman appearing before a magistrate to object to a man's being put on the panel?—I said that I thought it would be quite inefficient; but I found that it was suggested by Serjeant Armstrong, and many other men of great experience, and I see no other way.

56. You would not propose to go back to the old system of giving the sheriff the power which he had before, would you?—Unquestionably I would, with the safeguard I recommend; I would make him go through the list substantially, but with a discretion to omit from his panel improper persons.

57. Have you read the evidence which was given before the Committee of last year?—Yes.

58. Has any sub-sheriff who was examined here last year suggested the advisability of going back to the old system?—No; on the contrary the sub-sheriff would be glad to get rid of the trouble and responsibility.

59. The evidence of the sub-sheriffs was however against going back to the old system?—Yes, to save themselves the trouble and responsibility.

60. Never mind the motive, that was the fact, was it not?—Yes, that was the fact, but having the mere fact without the motive would mislead.

61. Did Mr. Serjeant Armstrong give very strong evidence against going back to the old system?—Yes, very strong evidence.

62. Is it not the fact that Mr. Serjeant Armstrong has the largest experience of any man in Ireland?—Yes, but he gave no reasons. I would not legislate on mere suspicion unless it was well founded.

63. Did you state that there is generally felt by persons serving on juries a sympathy with crime?—No, not generally, but to a considerable extent.

64. Are you speaking of your own knowledge?—Yes, of my own knowledge.

65. Derived from your professional experience?—Yes, derived from my own professional experience, and my very great intercourse with the people.

66. Have they told you so?—They have not told me so, but I know it. A. B., whom I have reason to trust, has told me of C. D., and so on. I know every man and woman within 10 miles of where I live in the north of Ireland; I know their modes of thought and habits.

67. Is it from knowing their modes of thought that you derive your own personal knowledge?—Yes, and from what I hear; jurors have often told me that they were afraid to serve on the jury; you would hardly expect a man to come and

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and tell you that he was a Ribbonman, but I could put my finger on Ribbonmen.

68. And upon Orangemen also, I suppose?—Yes; an Orangeman never conceals anything; that is the difference between the two societies.

69. Is not the Orange society a secret society?—No, not at all.

70. Should I be admitted to one of them?—No, nor I either; but it is not a secret society; an Orangeman parades about with an Orange sash.

71. Do you think that there is sympathy among the Orangemen in the jury box when a brother Orangeman has to be tried?—Yes, certainly there is, and that is one of the reasons why I would give power to the sheriff to make certain exclusions from the panel.

72. You would give power, would you, to the sheriff to select the jury to try a Roman Catholic who is to be tried for some offence against an Orangeman?—I would give power to the public officer to omit Orangemen from Orange trials and Ribbonmen from Ribbon trials.

73. Are you aware that in one of the counties which you have alluded to the sheriff was removed for misconduct?—Alleged misconduct.

74. Have you always found the sub-sheriffs conscientious men, who would faithfully discharge their duty to the Crown?—Every sub-sheriff I know, has come up to that character; the sub-sheriff, as a rule, occupies his position for a long time; he occupies it under high sheriffs of different religions, different politics, and different characters; if he behaves like an Orange partisan under one sheriff, the Roman Catholic sheriff who perhaps succeeds the other, would very soon get rid of him; but, as a rule, nothing of the kind is done.

75. I understand you to say that you would take care that the high sheriff himself made the selection, and that the examination should take place on oath?—Yes, I adopt the statement of Chief Justice Whiteside, with regard to that at Question 4237 in the evidence of last year; I think that would be an additional satisfaction to the public.

76. Will you be kind enough to refer to that part of the answer of Chief Justice Whiteside?—I will read it he was asked at Question 4237, "I think you also stated that the city special jurors were more satisfactory than the county ones?" and he replied, "Yes, I have no complaint to make about them at all; I think they are very good. I should mention to the Committee about the city and county of Dublin, that the right to nominate or to recommend the sheriff for the city and county, belongs to the individual who fills my office; he has that privilege, if it be one, of recommending the sheriffs for appointment by the Crown. I have had, I think, very respectable men as high sheriffs; I tried to have men that everyone would respect My last high sheriff was Mr. Darcy, who, I believe, is a Member of Parliament. He and his sub-sheriff, under the old system, gave me very good juries; I mean, juries that did their business well. What you look to is to get the business of the county done, and done satisfactorily, and the sheriffs gave me very good juries. The gentleman who succeeded Mr. Darcy is, I believe, of opposite opinions, but, if he had an opportunity, I am satisfied that he would give me just as good juries as the sheriff who preceded him. A former high sheriff of the city informed me (and I told him that he was only doing his duty) that he examined the book himself, and that he looked carefully at the names and the fitness of the jurors who were returned, and I have a confident opinion that if the high sheriff of every county would really do his duty, and not leave it to be performed by the sub-sheriff, but would examine the book with the knowledge that he has of the country in which he lives, and see that fit and competent jurors were returned, that duty would be faithfully performed, because if you mean to trust anybody (it may be difficult to know whom you would trust in Ireland with any discretion in this matter), but if you do trust anybody, I cannot conceive that there is any one so fit to be trusted as the high sheriff, who is a gentleman independent of the Crown, or ought to be so, and of the people; and if there were high treason trials to-morrow in Devonshire, I know of no one so fit to be trusted with the selection of jury as the noble Lord whom I see in the Chair; but I think if that power is given, and there was a great dispute about it long ago whether it ought or ought not, I think the high sheriff should be bound to sign on the panel a declaration that he has read the panel, and compared it with the jurors' book, and to certify that it is impartially chosen, in accordance with the Act of Parliament, as he verily believes." I think it would be useful to take that suggestion and make the high sheriff himself perfectly responsible for it, so as not to have any distrust of the sub-sheriff.

77. That answer which you have read had reference to juries summoned under the Act of Parliament which we are now discussing, had it not?—I think not, because he talks of the high sheriff selecting the jurors for their fitness.

78. They being returned alphabetically, according to their rating?—No, it cannot have regard to that, because the high sheriff has no control at all. The vice of this Act is that it is a mere machine, giving you the bad and the good without the power of sifting.

79. Are you aware that Chief Justice Whiteside brought in a Bill of a similar character, with a rating of 30 *l.* a year?—If he did I think he was very wrong; that is all I can say.

80. You differ with him on that point, do you?—I do not know what his Bill was; I do not care so much about the rating.

81. At Question 4305 Mr. Justice Whiteside was asked, "The qualification in that Bill which you brought in was 30 *l.*, and the Committee reduced it to 20 *l.*, did they not?" And he replied, "That was against my opinion. We had a 30 *l.* rating for common jurymen, and I think 60 *l.* for special jurymen: a proportionate number alphabetically." Chief Justice Whiteside also adopted that principle, did he not?—That is in the preparation of the lists. The alphabetical system in the preparation of the lists is a convenient one, no doubt, but the two things must be kept entirely apart, namely, the preparation of the lists and the preparation of the panel.

82. Are you aware of the special jury list in Ireland having become deteriorated in character?—Very much so.

83. Are you aware that Mr. Lopes stated in the House of Commons the other night that it was so in England also?—I was not aware of that.

84. You

Mr. *Downing*—continued.

84. You would like to see the law in both countries assimilated, would you?—As far as circumstances would permit, certainly I would. I think the laws should be the same, and administered, as far as possible, in the same manner.

85. Would you like to see the chairman of quarter sessions have the power to excuse a juror, or remove his name from the panel, on grounds that may be suggested, and which no Act of Parliament can meet?—That would be useful.

86. Are you aware that Chief Justice Whiteside said, in answer to a question put to him, that he thought the judge should not have the power of his own mere will to do that?—Under the old system, if a juror misconducted himself, or appeared utterly unfit, I told the sheriff not to put the man on the panel again, and I think that is a very useful thing; any judge ought to have the power to say, remove that man from the jury list.

87. That being done in the public court?—Yes, that being done in the public court.

88. You are favourable to the system of rating, are you not?—Yes.

89. The next part of the Act is the alphabetical order, which you condemn?—Yes.

90. Can you suggest any system by which this inherent vice, as you call it, could be removed?—The only system I can suggest is this power to the sub-sheriff.

Mr. *Verner.*

91. With regard to that answer of Mr. Justice Morris, to which you referred, with regard to the sheriff having the power of revising the list again, do you think that his not having that power makes it very difficult to collect the fines, from his not knowing who has emigrated, who has died, and so on?—The jury lists are revised every October sessions at present.

92. What I refer to is, the sheriff having the power to choose or to exclude people in order that he may know who have died or emigrated in the meantime?—I do not think there is any practical difficulty about that at present; but I would take the liberty of suggesting that the proper way of summoning juries is not, as it is done at present, by sheriffs' bailiffs, who are sometimes tampered with, and do not summon some people at all, but I would adopt Mr. Serjeant Armstrong's suggestion, and do it through the post. I think a letter will reach practically every man on the jury list to whom a registered letter was sent; and if he was so very obscure a person that he never got the letter at all, it would be very lucky not to have him on the panel; he would be no loss. Then you would get rid of that objection to service by bailiffs who will often take 2 *s.* 6 *d.* for not effecting any service at all, so that the most respectable men are very often not served and do not attend. I would also, I think, be disposed to adopt another suggestion, if it is not going too far in me to say so. I see that in both the English Bills there is a proposition made that seven jurors shall be enough in civil cases, unless the parties insist on 12. I see no objection to seven jurors in civil cases. I think it would be quite enough, and it would have a tendency to relieve jurymen to a considerable extent. I would also adopt the various qualifications which are to be found in those two Bills, and I would add the 50 *l.* and 20 *l.* free-

Mr. *Verner*—continued.

holders and rent-chargers, and this would all have a tendency to relieve jurors.

Mr. *Bruen.*

93. The change which was made by the amendment Act of 1873, was that it increased the qualification, was it not?—Yes.

94. That increase of qualification in the counties you will know, I think, was this: that is to say, Lord O'Hagan's Act specified a net value of 20 *l.* or upwards with regard to lands, tenements, and hereditaments, for persons on the general jurors' book; and the amending Act increased it in this way: "A net annual value of 30 *l.* or upwards in respect of lands, tenements, or hereditaments within any of the said counties, or a net annual value of 20 *l.* in respect of lands, tenements, or hereditaments appearing on the rate-book of any union, to be situate in any city, town, or village, within any of the said counties;" so that in the country parts it was an increase of 10 *l.*?—Yes.

95. Has that increase given to you a better class of jurors?—Of course a great number of very bad ones have been struck off by that Act, but that does not at all supply us with a sufficiently intelligent class. We have had dreadful failures of justice on my circuit notwithstanding that; I do not like to speak of cases in which prisoners are to be tried again.

96. It is proved by actual experience, is it, that this increase in the qualification has not given such a class of jurors as to prevent the necessity of exercising the large powers of ordering them to stand aside by the Crown solicitor?—There is no doubt about it.

97. Do you think that a further increase in the qualification would produce the effects that are desirable?—I do not see how you could further increase it; you would not have a sufficient number of jurors if you were to do so. Mr. Downing proved to Mr. Serjeant Armstrong, that if this increase to 50 *l.* was adopted in that large county of Tyrone, you would exhaust the whole of the panel in two assizes.

98. You cannot travel further in that line of increase, you think?—I think not.

99. In your suggestions with regard to revising the lists by the justices at special sessions, do you mean that that revising session should be held in one place for the whole of the county?—In each petty sessions district; the object is to have local magistrates who know the jurors there, and the area should be sufficiently small to enable them to know nearly everybody.

100. In the case of Montgomery's first trial, the trial took place before Lord O'Hagan's Act, did it not?—Yes; it was stated, I do not know how true it is, that there was only one dissentient juror in that case.

101. The second trial also failed, did it not?—Yes.

102. That was after Lord O'Hagan's Act passed, was it not?—Yes, I think so.

103. At all events, it was at the second trial that that incident took place of the juror having put this question to the judge, which showed that after the whole of the trial, and the explanation of the learned judge, he was completely ignorant of the laws of evidence?—Yes; and not only of the laws of evidence, but that he did not know what he was about at all.

104. Now, with regard to the third trial; how

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many jurors were set aside by the Crown solicitor?—I am not positive with regard to the number, but I heard that it was 120; but see what would happen if that kind of thing went on; suppose three or four prisoners were to be tried for felony, each prisoner has 20 challenges; we will take three prisoners, they can set aside 60 jurors without asigning any cause, and then if the Crown is forced to set aside as many more, or perhaps more still, the whole panel is exhausted, and what you would have to do then would be to postpone the trial, or else the Crown must try the prisoners with the very men whom they had set aside as incompetent, which would be a most absurd result.

105. Can you inform the Committee how many jurors were summoned on the panel of that third trial of Montgomery, when 120 were ordered to stand aside?—I cannot say; but I think the number usually summoned is about 200 for a county like Tyrone.

106. It differs in different counties, I suppose?—Yes; the sheriff is anxious to inflict as little inconvenience as possible, and he summons what he considers will be an adequate number.

107. The words of the Act are to summon a sufficient number for the trial of all cases, are they not?—Yes, I think so.

108. So that the number will differ in different counties, and at different assizes, according to the business to be done?—It ought to do so, because jurors would be usually brought at a great distance from home, and this Act of Parliament inflicts a very great hardship on the poorer jurors, who are often put to an expense which is quite beyond their means.

109. Have you any reason to suppose that the circumstances of the country with regard to criminal trials during the last two years have been such as to lead us to imagine that the extreme exercise of this power by the Crown solicitor is an abnormal one, and one that is not likely to continue?—It must continue so long as you continue your present jury system, because the present jury system for years to come must put a mass of prejudice, ignorance, and disaffection on the panel; and if that was not so, the Crown solicitor never would exercise the power to the extent he has done; he is, generally speaking, a gentleman of high standing, and I have always heard them say that it is one of the most disagreable duties in the world standing up in open court, and setting aside man after man in the face of the county; casting a stigma on every man whom he sets aside.

110. Mr. Downing asked you a question with regard to your former evidence, in order to elicit that you were favourable to the principle adopted in Lord O'Hagan's Act; I understand that you now qualify your former expression of opinion with regard to the preparation of the list; how is that?—It is in consequence of reading this evidence, and in consequence of at the last October sessions carefully considering what I might be able to do myself in the way of revising the lists; I now feel that I should be able to do absolutely nothing, and I think the county magistrates could do it much better, because they know everybody within a certain area, and I know nobody; and further than that, information would be given to them, because they know men who are capable of giving information about individuals which would not be volunteered to me as a stranger.

Mr. *Bruen*—continued.

111. But one principle intended to be brought into action by Lord O'Hagan's Act, was the principle of extending the duty of service more widely over the body of jurors than it was before, and you approved of that?—Certainly.

112. There is no reason, I suppose, why that principle should not be adopted and carried out in the amended form of the Act which you suggest?—Just so; I think, with this power which I suggest (given to any more trustworthy officer, if you please), you may safely extend your area, and advantageously extend it.

113. Now, have you looked into the Bill now before the House of Commons upon the English jury system?—Yes.

114. Will you kindly refer to Clause 49, the marginal note of which is, "Sheriff to register every summons"; and the clause runs thus, "Every sheriff shall enter, or cause to be entered, in the jurors' book which he shall have in his custody, against the name of every man who shall be summoned to serve on any jury, the date of such summons, and the court where such juror shall be required to attend, and shall copy all such particulars as aforesaid as may be required for the purpose of distributing the burden of service on juries in as fair and impartial a manner as may be among the whole body of men liable to serve from the jurors' book or books, for one or for as many more preceding years as may be necessary"?—Yes.

115. Now, the principle there put forward has your approval, has it not?—Yes; but I do not think that you can apply the principle of the Bill *in extenso* to Ireland. I would distribute the burden of service as fairly as I could over the whole body of jurors, so far as by doing that you can get competent and fair jurors.

116. You would recommend putting in the words, "having regard to competence"?—Certainly, otherwise you make no change at all.

117. If you do not have regard to competence, will it not be the fact that the system will break down?—Yes; the system would have broken down in those cases in which the power of setting aside jurors was exercised, unless it had been exercised; in fact, wherever the power is not largely exercised, justice does break down. We had a very strong example of that at the last assizes (but the person has to be tried again for his life), because the power was not sufficiently exercised there.

118. With regard to revising the lists, Mr. Downing put to you a question on your suggestion of the police attending, to object to persons being put on the list; was it your idea that the police were to attend at the revising sessions, and to put forward objections without questions being asked of them?—That was Mr. Serjeant Armstrong's suggestion, and not mine; I said, if you are driven to it, they are almost the only people who can be of use; but with my own suggestion you do not want that kind of thing.

119. But if you are to have the jury list summoned by an alphabetical and mechanical process, you must exercise a very great degree of vigilance in forming the jury list first, must you not?—Yes.

120. And you must take extreme measures to expurgate from the list the names of those persons who are not fit to serve?—Yes, no doubt.

121. But

Mr. *Bruen*—continued.

121. But still those extreme measures are only necessary under the supposition that the summons of the panel shall be an entirely mechanical process?—They are only necessary under those circumstances.

122. You were also cross examined with regard to the sub-sheriffs' evidence before the Committee last year, and their wish not to go back to the old system?—Every one of them desires to have that onus thrown on some one else; I should desire it myself if I were a sub-sheriff.

123. You think the motives are not to be disregarded which led to that wish, I suppose?—Certainly not; if you were to draw the inference that the sub-sheriffs were admitting that they prepared the panels improperly, that would be untrue, but if you infer that they wished to get rid of the trouble and responsibility, that would be the right inference.

124. Did I understand you to say that you thought that no member of an Orange Society was fit to be a sub sheriff?—No, I never said anything of that kind; I meant only this, that if I were a sub-sheriff, and if I knew that a number of Orangemen were to be tried for an Orange offence, I would put no Orangeman on the panel to try them, though I once knew a jury of Orangemen convict their own grand master of an Orange offence; but a trial of that kind would not give general satisfaction.

Mr. *Downing.*

125. What case was that?—Mr. Johnson of Belfast, a Member of Parliament; there were a number of Orangemen on the jury, and they convicted him without hesitation.

Mr. *Bruen.*

126. But you make no imputation against the members of the Orange Societies, as to their being people guilty of allowing themselves to be actuated by political motives?—No; I must not be misunderstood about this. The Orange Society is a society the object of which is to sustain the law in its administration; but I would put no partisan on a jury to try a brother partisan of any kind. As a rule Orangemen are excellent jurors, except on such occasions as I have referred to. Their organisation is an organisation in sustainment of the law; whereas the Ribbon organisation is an organisation to prevent the administration of the law.

127. Have you any suggestions to make to the Committee with regard to the expenses of the Jury Act. I mean with reference to the great expenses which are now thrown on the county rates?—If you summon jurors through the post, and you are content with that, and if you diminish the number of jurors from 12 to 7 in civil cases, perhaps it would be better.

128. But that would not in any way decrease the expense of the preparation of the jury list and the jurors' book, which is the great complaint at present, is it not?—I have not considered that question much.

129. Is it not the fact that the compilation of the jurors' book, in strict dictionary order, imposes very great expense, and takes up a great deal of the time of the officers charged with that duty?—No doubt.

130. If it was not in dictionary order, but simply in alphabetical order, it would not take so much time, and cause so much expense; is not that so?—Yes; but still I think the preparation of the book in dictionary order is convenient.

Mr. *Bruen*—continued.

131. Of course the necessity which is imposed by the dictionary order of selection causes great trouble and expenditure of time, does it not?—Yes.

132. And therefore an alphabetical list in dictionary order imposes a great deal of expense on the county?—Yes.

133. Have you thought about the question of expense?—No; I consider the other question of such paramount importance for the proper administration of the law that I have neglected secondary details.

Mr. *Law.*

134. Can you tell the Committee how many jurors were directed to stand aside at the first trial of Montgomery?—I do not know.

135. Do you know how many were directed to stand aside at the second trial?—No; it was only when this Act of Parliament was on its trial that I took such careful note of those things.

136. I understood you to say, that one of the numbers was 120, but you do not know that yourself, do you?—I believe it is correct.

137. But you do not pledge yourself to the number, do you?—Just so; but I know that 56 were set aside on the trial of the blind man.

138. I think you said that in the Smith case there was nothing agrarian; what class of case was it?—A blind man, of a very low order in life, murdered another man.

139. Was not that a case in which he murdered his oppouent, who was the plaiutiff in an ejectment to be tried within a week, about a piece of bog?—I do not know that; I meant that it was not a case in which a landlord was murdered, or an agent, or bailiff, or anything of that kind; I meant to convey that it was a case between two very poor men.

140. But the contest was about a piece of bog, in which the murdered man was plaintiff in an ejection to be tried the following week, was it not?—I do not know.

141. You never heard of that?—I never heard of it.

142. Do you know how many jurors were made to stand aside at the last trial of Montgomery?—I do not know that.

143. You spoke also of the character of jurors in civil cases on the north-west circuit at the last assizes, and you said that you did not consider them satisfactory?—No; not at all satisfactory.

144. You complained that the jury did as the judge instructed them, or that there was no finding because they disagreed?—Yes.

145. How many disagreements were there on the north-west circuit in civil cases?—I cannot say.

146. Were there any?—I cannot tell.

147. I believe you were leading in nearly every civil case on that circuit?—I cannot refresh my memory just now upon that point, of how many disagreements there were; I forget even the number of cases.

148. But you said you complained of the conduct of the jurors, because they either took the suggestion of the judge, and acted upon it, or found no verdict at all?—There were some disagreements.

149. Are you prepared to say that there really were

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were any disagreements?—Excuse me, I am speaking of criminal cases.

150. Your answer was directed to civil cases, as I understood?—It was not intended to be directed to civil cases; it was a general observation.

151. As a matter of fact, were there any disagreements in the north-west circuit in civil cases?—I think there were, but I cannot recollect; there was, certainly, in one Crown case.

152. Will you be kind enough to tell the Committee what that was?—There was a most important case at Lifford; a trial for murder, in which there ought not to have been any disagreement.

153. That was not the M'Kenna case?—No, it was another case.

154. Let me see if I quite understand the mode in which you suggest that those lists should be revised by the magistrate. I thought at first you proposed to go back to the old system of revision at a special sessions?—I adopted the principle introduced by the Attorney General.

155. The Committee would prefer having your own individual opinion?—My individual opinion agrees with Sir John Coleridge's and that of Mr. Lopes; that opinion amounts to this: that a special session should be held in each petty session district, in which the local magistrates, and the rest of the magistrates should attend, and there revise those lists previously prepared by the clerks of the poor law unions.

156. Do you intend that the magistrates should revise the lists upon information given in open court, in fact, upon evidence, or on their own special individual knowledge?—Both.

157. It need not be upon evidence then?—Upon both; if you are to have any practical revision you must give the largest powers, and that is Mr. Serjeant Armstrong's recommendation.

158. Do you think it is desirable to adhere to the suggestions of the English Bill as far as possible?—As far as the circumstances of the countries do not differ.

159. Suppose that by any accident this Bill did not pass in its present form, would you still adhere to the revision of the lists by the magistrates in petty sessions?—Certainly, you may possibly in that case have an effectual revision, but before the chairman of quarter sessions you cannot have an effectual revision.

160. Do you agree in the suggestions of the English Bill, that there should be special juries in criminal cases?—No.

161. You differ there?—I differ there, because I think that much greater suspicion with regard to the administration of justice, and a much greater dislike to the administration of justice, would be caused by trying the criminal population of Ireland by special jury, than by any other cause.

162. In other words, we must have regard to the popular feeling and the condition of the country in arranging a jury system for Ireland as distinguished from England?—I should like the people to think that the law was fairly administered.

163. Do you agree with other witnesses that it is almost as important that a jury trial should be believed to be fair as that it should be fair, in fact?—Not nearly so important.

164. But desirable?—Of course it is desirable. I should like to create confidence in the people of the country with regard to the administration of the law.

Mr. *Law*—continued.

165. You spoke of the use of the power of setting aside jurors by the Crown solicitor as an invidious power which had been very largely exercised at what you called the Fenian trials?—Yes.

166. Was not that power exercised under the old system, under Lord O'Hagan's Act?—Yes; but the old system was not perfect

167. It was perfect in this sense, was it not, that it gave an unlimited power of selection to the sheriff?—The sheriff did not exercise that power sufficiently.

168. Are we certain that he would exercise that power in future?—The sheriff and the other public officers, like the Crown solicitor, are cautious in the exercise of large powers, such as they had under the old system, and neither of them, perhaps, will exercise them to the extent which particular occasions may require; but still exercising it even to a small extent is a useful thing.

169. In the revision of your own lists last October, you were attended by the public officers, were you not?—Yes; the clerks of the Poor Law Unions were there.

170. The sub-sheriff, I believe, is supposed to know a good deal about the people in the county?—Nobody in the county knows the people so well; he acquires that knowledge in the exercise of his official duties; he knows the character and circumstances of nearly every man in the county, especially as he generally remains so long a time in his office.

171. Do you think that there is any insuperable difficulty in the way of having the lists effectually revised by the chairman of quarter sessions?—I could not do it; it is a mere farce. I was considering myself how I could do it. If I were to read out every name and ask, "Is there any objection against A. B.?" there might be the very strongest objection; he might be a confirmed drunkard. As a rule there is hardly any officer in the court who would come forward and say so; but suppose a man came forward when C. D. appeared, and said, "C. D. is a member of a Ribbon lodge," and you had to say "How do you prove that?" he would say, "I cannot prove that;" you would say, "You are a very great fool to make such a charge as that;" then there is an action brought against him by C. D.; he pleads that it is a privileged communication; it is tried by a jury, and a jury are sure to find that there is malice, and he comes in for damages in an action for slander.

172. No doubt your system would get rid of that difficulty, because the sheriff would *in camerâ* act on his own suspicions?—Yes.

173. Is that in your opinion desirable?—Yes, because he would never act on a suspicion which was not well founded.

174. Does perfection follow *virtute officii*, the office of sub-sheriff?—No, but he knows the county best, and the character of every man in it, and I am sure he would be rather chary in exercising his functions; any gentleman of position and character, with public opinion pressing upon him, would be careful.

175. If the sub-sheriff knows everything, do you see any insuperable difficulty in his giving the information to those who are entrusted with the duty of revising the list?—He would not do that

Mr. *Law*—continued.

that in open court; he would have a hundred actions for slander against him for giving that information; you could not impose such an invidious duty upon him.

176. You do not think that the chairman of quarter sessions ought to have any such duty cast upon him?—I do not mind it, but I know that I am perfectly incompetent to do it.

177. How long did it take you to revise the list in October?—The revision took place in last October in three different places, and it occupied a few hours each day at each place; it is a mere perfunctory business.

178. I believe it was very much a perfunctory business under the old system?—Yes, because the disqualifications were pointed out by Act of Parliament, and the magistrates could not go beyond that.

179. Do you approve of the suggestions of the pending Bill that the sheriff in summoning juries is to go through the whole body of the jurors?—I think the sheriff should certainly summon substantially the whole of the list.

180. You are in favour of distributing the burden of serving in juries as widely as possible, are you not?—Yes; but of course I mean consistently with obtaining competent men.

181. You would give the sheriff unlimited power to leave out everybody he pleased though on the jurors' book?—Yes; I do not see how you can limit it except by requiring him substantially to go through the panel, and if he does leave out anybody for an improper motive, you have your challenge to his array.

182. Would that apply to improper motives?—Yes.

183. Can you get at the motives?—Half the crimes on the Statute Book are crimes of intention.

184. But generally accompanied by an act, are they not?—Yes; and this is accompanied by an act.

185. Do you suppose that the power of challenging the array would be an effectual check?—Of course the challenge to the array states that the sheriff has left out, or put on, a man from improper motives.

186. Is there no difficulty in finding that out?—What is the difficulty; the judge ought then to select two impartial men of position to try the charge; I see no more difficulty than in finding out any other crime where the criminality consists in intention

187. Such crimes are generally difficult to find out, are they not?—No; convictions take place constantly, especially in England.

188. You have referred several times to Mr. Serjeant Armstrong's evidence. Will you be kind enough to refer to Question 799; he was asked, "You are not surprised that there should have been an impression that the panels were not impartially framed?" and he replied, "I am not in the least surprised; that is the great merit of the Act as it stands, that it strikes a decided blow at such a system. I have not the slightest hesitation in saying that, under the old system, cases occurred in which you could have a jury to order, and if you prescribed your jury, you might get it. I have not the slightest hesitation in saying so from my observation. I have been obliged in Dublin, myself, in a civil case, in consequence of a man that I saw about to be sworn upon the jury, to withdraw notice of trial, and never to proceed with it, knowing perfectly well that the man would find against my client, no matter what the consequence was." Do you disagree with that?—I disagree *in toto* with it, and no other witness out of the whole body agrees with it. That incident would not prove anything improper in the sub-sheriff; on the contrary, the way it arises is this: the sub-sheriff puts on the panel a number of excellent names, in the city of Dublin, for instance, comprising some of the principal merchants, and those merchants do not attend; but there is another class who do attend, to whom it is an object to attend, called guinea-pigs, men who almost live by it. Those men very often may have a friend in either the plaintiff or the defendant, and some of those men will come and find a verdict for their friends. That is not the sheriff's fault; therefore that instance of Mr. Serjeant Armstrong has as much to do with the operation of the sheriff's powers as any extraneous Act in the world.

Mr. *Law*—continued

189. Did you read the evidence of other witnesses who were examined before the Committee last year?—Yes.

190. Did you read the evidence of Chief Justice Monahan?—I did.

191. He was asked at Question 2602, "Have you reason to think that there ever was partiality in the selection of the panel?" and he replied, "To be sure there was partiality. I cannot give many instances, but there is no doubt there was partiality, and I recollect, going back to ancient history when I was at the bar; I recollect a circumstance occurring to my own knowledge, and I was very sorry to know it and bear of it, but I was obliged to hear of it"?—That is one single instance in his whole life; you will find no other witness who says so except those two.

192. Is it not the fact, whether rightly or wrongly, that there is a very general impression abroad in Ireland that panels were framed occasionally with partiality?—Among the orderly classes in Ireland there is not that suspicion. That assertion was made by the disaffected classes in Ireland, and I believe without foundation.

193. What do you mean by the orderly classes?—I think we Northerners know very well what is the meaning of that; I mean persons like the inhabitants of Ulster; the orderly and industrious class.

194. Are you not aware that there was a feeling of dissatisfaction and suspicion, whether well founded or wholly unfounded, even in Ulster, with regard to the formation of the jury panels?—Occasionally that was asserted when party trials arose, but there is no such general opinion in my belief among the orderly class.

195. Do you mean by the orderly class people who agree with yourself?—I mean the orderly industrious classes who do not indulge in seditious practices.

196. In short, you do not see any mode by which juries can be satisfactorily empannelled except by leaving with the sheriff the power, if he chooses to exercise it, of being partial in the selection of the jury?—I will not use that phrase, but I can see no other mode of doing it; I have looked myself carefully into the subject, and I do not see any other mode so satisfactory as leaving the power of selection, which every

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witness from the beginning to the end of this Blue Book last year recommends, in the sheriff.

197. We probably differ in our interpretation of the evidence, but at all events I suppose there would be no difficulty in having the jury list so revised as to strike off all who from criminality or ignorance, or other good causes, were unfit to try cases?—I do not know how you can get at the ignorant class; you would require a competitive examination.

198. Say, for example, a man who could not read or write?—That of course would exclude him, but it is going very low down.

199. There is great ignorance in high places?—No doubt.

200. Your evidence then comes to this, that the system of trial by jury cannot be satisfactorily worked in Ireland without leaving the sheriff the power of fitting the panel to particular cases?—I am satisfied that the sheriff does not do that in a bad sense; I cannot express myself more clearly than Sir John Young expressed himself when the Bill was brought in by Mr. Justice Fitzgerald and Mr. Justice Keogh; I am perfectly confident that without that power the administration of the law will break down whenever a strain is put upon it in Ireland.

201. Your view is, that the sheriff when an Orange case comes on is to take care that there is no one of that particular opinion on the jury to interfere with the administration of justice, and when a Ribbon trial comes on he is to take care that there is no Ribbon man on the jury to interfere with the administration of justice in that case; in fact, that there is to be a framing of the panel exactly in accordance with the nature of the case to be tried?—I do not see how you could possibly secure a fair trial in any other way.

Mr. *O'Reilly.*

202. You stated that, as far as you know, there was no opinion entertained in the northern counties of Ireland by any of the orderly classes that the panels were even unfairly framed?—Yes.

203. Do you include the Roman Catholics of the northern counties among the orderly classes?—Some of them; I do not say that either religion has a monopoly of order; I would be very sorry to say that.

204. Would you kindly go a little further and explain what you mean by the orderly classes; do you include the bulk of the Roman Catholics, because "some" may mean a very select number, or it may mean the Roman Catholics generally leaving as exceptions the disorderly persons dispersed among Roman Catholics, Protestants, and Episcopaleans alike?—I am not going to classify orderlyness by religion, but nobody can conceal this fact, that in Ireland there is a seditious class of newspapers most largely read throughout the country, and far more largely read than any other class of papers; those newspapers inculcate disaffection and dislike, and suspicion of the law; and the persons who read that literature alone entertain the opinions impressed upon them by that class of newspapers; that class I call the disorderly class. Tons of treasonable rubbish are sent from Dublin every Saturday night, and nothing else is read on Sundays but that.

Mr. *O'Reilly*—continued.

205. When you state what, in your belief, is the opinion of the orderly classes of the province of Ulster, do you include in those classes the bulk of the Roman Catholic population, or not?—I decline to answer that question; and even if I were disposed to answer it, I have not the materials to do so.

206. May I conclude that in your statement as to what, in your belief, is the opinion held in the province of Ulster with regard to the question whether jury panels are ever framed unfairly or not, you are not prepared to state that you do include the opinion of the bulk of the Roman Catholic inhabitants of the province of Ulster?—I believe the orderly and respectable population of Roman Catholics, of which there is a very large number in Ulster, do not entertain that suspicion.

207. You decline to say whether you include the bulk of the Roman Catholic population or not?—You want me to say whether I think the bulk of the Roman Catholic population are disaffected or not; that is a question which I will not answer, because I do not know I have the highest respect for my Roman Catholic fellow-countrymen; but I believe that a great number of them are led astray by those publications.

208. Do I understand then that by orderly classes, you mean all well affected persons as distinct from disaffected persons?—Yes; I mean very much that.

209. Your statement is of course a matter of opinion on your part?—Yes; of course.

210. It depends on your power of knowing the opinions of all classes of persons in the province?—I am very well acquainted with all grades of society in the northern counties. I cultivate their acquaintance as much as I can, without regard to class or grade. I have the highest opinion of their general qualities.

211. You would, perhaps, not set yourself up as having peculiar means of knowing the opinion of the population of those counties more than other persons who reside there, and who mix with the population?—I think very few persons know them better than I do; I reside among them, and associate with them. I know every man and woman within a radius of 10 miles where I live in Donegal, without regard to their station in life.

212. I think you objected to the exercise of the power of setting aside by the Crown solicitor, because you said it was a very invidious duty, having to be done publicly in open court?—Yes.

213. Am I right in supposing that you advocate giving to the sub-sheriff simply the power of setting aside persons on the panel, to be exercised in private without any check or publicity, or without even the check of its being distinctly seen that he does set that individual aside?—I advocate given power to the sub-sheriff to decide who are competent and who are not competent jurors. I would rather not be obliged to do that, but I recommend that as a disagreeable necessity.

214. With regard to the magistrates at petty sessions; what is the number as a minimum for revising the jurors' book?—I do not know whether there is any limit.

215. You recommend that the magistrates at petty sessions should have the power to strike persons off the jurors' book from motives only known to themselves in private and without assigning

Mr. *O'Reilly*—continued.

assigning any reason?—Yes; that is a necessity also, and I adopt it very much, because it was proposed by Mr. Serjeant Armstrong, who I need not tell the Committee has had immense experience of the difficulties in Crown prosecutions; he has been engaged for the Crown in nearly all the important criminal trials lately.

216. But you see that in both cases the right exercise of that power entirely depends on the integrity of the persons exercising it, there being no control, no publicity, or need to assign any reason?—Public opinion is very powerful in enforcing the proper discharge of public duty; nobody is free from the power of public opinion nowadays; but what motive they would have for exercising that power unfairly I cannot see.

217. You mentioned as a fact, which you said ensures practically the impartiality of the sub-sheriffs, that they serve under many different consecutive sheriffs who are often of different religious and different political opinions, and, therefore, the sub-sheriff is naturally desirous to preserve a character for impartiality in order to be continued in his office?—Yes, I think that does actuate him.

218. Now in those northern counties in which party feeling between Orangemen and Roman Catholics exists, how many sheriffs this year are Roman Catholics or Liberals in politics?—I never inquired; it never occurs to me to think of that kind of thing, nor do I think it occurs to the public in those counties to inquire after a man's religion, if he has any.

219. The reason I ask is simply to test how far the cause which you assign as insuring, or tending to insure, the impartiality of the sub-sheriff, is practically in operation; I neither depreciate nor exaggerate the force of the argument, but taking any northern county, in how many years, ordinarily speaking, would it occur that there would be a Liberal or a Roman Catholic high sheriff; my reason for asking is this: you said there was a mixture in the high sheriffs; now I want to know, practically, what is the mixture in the northern counties?—Of course, the majority of the men of fortune and position in the north are Protestants.

220. And would you not add Conservatives in politics?—I am happy to say that they are, but there are a great many that are not. What the high sheriff wants in the sub-sheriff is a man who will keep him out of scrapes.

221. But can you give the Committee any idea to what extent, practically, that cause is in operation, which you assigned as a cause for insuring the impartiality of the sub-sheriff?—Do you confine that to the north?

222. I do in this case?—I cannot tell, because one of the subjects I must avoid, is inquiring into a man's religious opinions; I never think of doing it, and it is a most unfortunate thing that it is so much done in Ireland.

223. I quite agree with you, but as you assigned that as a cause in operation in the northern counties, can you tell the Committee how far it is in operation?—No; I have given the reason for not being able to tell you, namely, that I do not make inquiries.

224. But can you say that it is practically in operation in the northern counties?—They had a Roman Catholic high sheriff in Donegal two or three years ago.

Mr. *O'Reilly*—continued.

225. Can you tax your memory with another case?—I believe that he is the only gentleman of that religion of property in the county; they went out of their way to select him; he had come from Galway, and the very moment they got him into the county they selected him. He was a most fit person.

226. Am I right in thinking that the object with which you would give to the sheriff this power, is to enable him to leave out of the panel persons who are unfit to serve?—Precisely.

227. Would you be satisfied with giving him power to leave names out of the panel, leaving it obligatory on him in other respects to go through the jury book in a fixed order?—I think what you mention would be desirable, namely, as much as possible to follow the fixed order, but not to be compelled to take every man as he turned up. I have two objects in view: first, to extend the area as much as possible for the convenience of jurors, but the great object is to get competent men to serve; the only thing I have in view is to attain those two objects.

228. You will perceive that in Sir John Young's Bill it is not obligatory on the sheriff, so to speak, to go through the jurors' book in any fixed way; it only took the form of a recommendation?—Yes.

229. Now, would you object to make it obligatory on the part of the sheriff to go through the jury book in a fixed order, leaving out such names as he deemed right, the object being that he should be definitely under the obligation if he left out particular names, of letting it be known that he left them out?—Yes, that would be desirable, because you could then get at him to challenge him if he did it improperly; I would give every facility for getting at him, and perhaps give power to the judge to impose a very heavy penalty on the high sheriff if he violates his duty in that respect.

Mr. *Herbert.*

230. You recommended that the stipendiary magistrate and the resident magistrates should revise the jury book?—Yes.

231. Now, what would the public opinion in Ireland be with regard to that, in the different districts where those magistrates reside?—I do not myself think there would be any ground for any suspicion with regard to the revision of the jury lists each October by the magistrates with the stipendiary magistrate. What object could they have in putting improper men on, or putting proper men off?

232. Supposing all the magistrates on the bench were Protestants?—I do not think that Protestants suspect Roman Catholics, nor do Roman Catholics, as a rule, suspect Protestants.

233. Is there a great deal of dissatisfaction generally in counties with the choosing of the associated cesspayers by those gentlemen on the grand jury?—Yes, and I am for altering that. The grand jury would rather not choose the associated cesspayers; there is great objection to it.

234. Would not the same objection apply to a juror being chosen by the same magistrates, though in another court?—No, not at all; the jury book consists of 7,000 or 8,000 names, perhaps, and these are made out only once a year, without the least reference to any case that might arise; then how could there be any rea-

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Mr. *Herbert*—continued.

sonable suspicion of the magistrates acting unfairly in a case of that kind. Besides, I think you do a great deal of harm by always legislating for unfounded suspicions; the Irish are suspicious people naturally, and you encourage them; whenever there is a suspicion in Ireland you have a piece of law to get rid of it without regard to the merits of the question.

235. You think the post is a proper medium for serving a juror with his notice?—I think so.

236. Is it not very often the case in Ireland that even very well-to-do farmers never get their letters for weeks; they leave them at the post office for weeks?—That is not my experience in the north of Ireland; I think they get their letters very regularly.

237. Should you be surprised to hear that in the late election where a gentleman wrote 1,100 letters to his constituents, a very large per centage were sent back to him marked as Unknown by the post office, and that there was written outside, "Not called for?"—I am satisfied that in that case they did not want to get them.

238. Should you be surprised to hear that some of those were my own tenants, who were anxious to get them, and that they asked me why I had not written to them?—I have no doubt that what you say was so; but I come from the exactly opposite portion of the country, and it is not my experience there.

239. You are not aware that in the mountain districts on the seaboard, where the people come to the post very seldom, the farmers only get their letters occasionally?—There would in that case be a decided objection to the post as a summoning medium, but I was not aware of that state of things, and if it was general it would be a complete answer to the suggestion.

The O'Conor Don.

240. I think you stated that none of the witnesses who gave evidence before the Committee of last year said that in their opinion there was anything like partiality in the formation of panels under the old system, except Mr. Serjeant Armstrong and Chief Justice Monahan?—Yes, I think so.

241. Have you read all the evidence, or were you present when it was all given?—I read the evidence very carefully, because I wanted to correct any crudity in my own views.

242. Have you read the evidence of Mr. Reilly, who was sub sheriff for some time in the county of Monaghan?—Yes; but I do not think that he said the suspicion was well-founded; he was the witness who gave evidence with regard to that remarkable challenge at Monaghan.

243. Do you remember he stated several instances in which Roman Catholics being on trial in the county of Monaghan, juries were empannelled composed exclusively of Protestants and Orangemen?—He did give those cases, but another witness accounted for them by saying the sheriff was in the habit of putting the persons who were the highest rated first, and the highest rated persons generally were Protestants.

244. That was the way in which it was accounted for by another witness?—Yes.

245. But is it not the fact that Mr. Reilly stated that in his opinion a very strong feeling existed that those panels were got up for a purpose?—No doubt that feeling would exist among the friends to the prisoner who was being tried. I for one am very much against having panels composed of persons exclusively of one religion. I think that they should be mixed up, and very likely that is what 19 out of every 20 sheriffs would do if they had the power.

The O'Conor Don—continued.

246. You do not remember that Mr. Reilly stated that having been engaged professionally, subsequently to the time he was engaged as sub-sheriff in one of those political cases, he wrote to the high sheriff beforehand, requesting him to have a fair panel got ready for the next assizes, and that the sheriff replied to him that he had nothing to do with it and left it in the hands of the sub-sheriff?—Yes, and so he does, as a rule, leave it to the sub-sheriff.

247. Do you remember that the panel which was subsequently furnished for the trial was one which was quashed as being partial?—I do not remember that in Mr. Reilly's evidence, but I have no doubt it is there.

248. Then so far as Mr. Reilly's evidence is concerned, do you not qualify your answer to Mr. Law, that no other witness except Serjeant Armstrong and Chief Justice Monaghan had stated that under the old system there was partiality in the formation of panels by the sheriff?—I do not think Mr. Reilly states it as applying to sheriffs generally, that they were partial. It is quite possible that he may have heard one instance out of 1,000 cases; but with regard to the trial of that challenge, I think that challenge was very absurdly tried, and for this reason. The panel was objected to, and then they selected persons to try whether it was a properly selected panel; and two of the very first names on the very panel itself were selected, those two names unfortunately happened to be Roman Catholics, and one of them was a person actually interested in the trial of the prisoner. The judge states that the verdict was entirely against his opinion. I think nothing can be more ridiculous than trying the fairness or the propriety of a panel by two persons selected from the very panel impeached. The judge should select two of the most respectable men in court, who are entirely independent.

249. I thought you said in answer to some questions put to you by Mr. Law, that you considered the existing system of trying whether a panel was fair or not, was very satisfactory or quite sufficient to prevent anything like partiality arising?—It is not incumbent on the judge to try the challenge by the two first names on the panel; but I say that wherever that is done it is an absurd thing to do, for you have an excellent machinery if you choose to adopt it in the system of challenge.

250. You think that in this particular case Judge Morris adopted a ridiculous proceeding then?—It was not his fault

251. But he had the option of trying the panel in another way, and if he adopted this system of taking the two first names on the panel, does it not follow, according to your statements, that he adopted a ridiculous proceeding?—I heard him state that this mode of trial was pressed upon him, and that he did not object to it; but I think that the judge himself should select the persons, and then you have a most excellent mode of trial.

252. Then I do not clearly understand you; has

The O'Conor Don—continued.

has the judge at present the power to select out of the jury panel those who are to try the panel that is objected to?—I think he has a discretion with regard to the mode of trying it.

253. And Judge Morris had that discretion in this particular case, had he not?—Yes.

254. You have stated just now that in your opinion the discretion used on that occasion was used in a ridiculous manner?—No; Judge Morris stated that that mode was pressed upon him, and that he gave way to it.

255. But that mode of trial is a ridiculous one, you say?—Yes.

256. If Judge Morris gave way, having that discretion, he must in your opinion have done a ridiculous thing?—The finding was directly against his charge, and the jury found as he states wrongly.

257. As to the old system, Mr. Reilly, at Question 4500, gives this answer: "From your knowledge as returning officer, I ask you, if you were so inclined, could you so arrange the panel for an assize that you could have any jury you pleased; that is, I mean of politics and feeling," and he replied, "On the old system I could make a jury to order"; do you think that that is a good system to go by?—Certainly theoretically he could make a jury to order, but practically, he could not; no public officer would dare to do it with all the public opinion pressing on him, and with this right of challenge behind him. Wherever there is a discretion reposed in any public person (and a discretion must always be reposed in public persons) it may be very improperly exercised; I might exercise it like a madman, but it is not likely I should do so.

Mr. *Plunket.*

258. Do I understand you to say, that after the sub-sheriff has thus exercised his discretion, you would make it the duty of the high sheriff, as suggested by Chief Justice Whiteside, to sign on the panel a declaration that he has read the panel and compared it with the jury book, and certify that it is impartially chosen, according to the Act, as he verily believes?—Certainly; I would very reluctantly give those powers to the sub-sheriff; I believe it is necessary, but I would hedge it round with every possible safeguard.

Mr. *Law.*

259. Will you be kind enough to tell the Committee what is the customary mode of trying the fairness of a panel on a challenge?—Challenges are very few. I believe that the judge has the power of selecting the mode of trial, but if counsel engaged in the case think proper to commit the trial to two names on the panel, the judge would very likely assent to that.

260. Have you ever seen a panel tried for partiality?—No; it is a very rare thing.

261. Is not the ordinary way of trying a panel by the first two names that answer on the panel?—I believe it is; but I think it is a very foolish way of doing it.

262. I believe it was suggested in the case you alluded to, that the fairness of the panel should be tried by two grand jurors?—I think that would be very fair.

263. Do you think that would be a satisfactory mode, that is to say, departing from the common mode?—I think it would; but I am one of those people who would not depart from the ordinary mode without a strong reason.

Mr. *Law*—continued.

264. Was not that panel tried by the ordinary mode of taking for triers the two first names of the panel?—I daresay it was; but the judge did not approve of the result.

Mr. *Bruen.*

265. One question with regard to an answer which you gave a short time back about the petty sessions; I think your suggestion was that the list should be revised, not at petty sessions, but at special sessions?—Yes, special sessions in petty sessions district.

Mr. *O'Reilly.*

266. Special petty sessions?—Yes; special petty sessions.

Mr. *Bruen.*

267. There is a distinction between petty sessions and special sessions in your mind, is there not?—Yes; what I meant was that special sessions should be held in each petty session district.

268. And that the resident magistrate should attend?—Yes.

269. With regard to petty sessions it is not obligatory now on the resident magistrates to attend, is it?—No.

270. There is a distinction then in your mind between the two things?—Yes, they should be held in October.

271. And I imagine that you would say that the special sessions should consist of more than one magistrate, would you not?—I am sure that the local magistrates would consider themselves so interested in the matter, that is to say, if you gave them a real power of revising the lists, that they would be sure to attend; nothing can be more important than the machinery for the administration of the law.

Mr. *Mulholland.*

272. Have you ever heard it suggested that summonses should be served by the police, at least in Crown cases?—Yes, and I disapprove of that.

Mr. *Law.*

273. Would your own process-servers constitute an efficient machinery for the purpose?—Yes; the process-servers in my court would be efficient.

274. Would it be better than the post office?—Yes; if what Mr. Herbert has stated is general.

275. In Donegal it would answer better, would it not?—Yes, very well. I think with regard to a man who is so behind the time as never to go to a post office, his absence would be better than his presence.

276. How many jurors would you get by post-office service from the district called the Rosses, in Donegal?—There are very few jurors in it; in one district there is only one voter, and the business was suspended for several hours at the last election, because a box which did not contain any votes when it arrived, had not come down with the rest.

277. I understand that the polling district consists

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Mr. *Law*—continued.

consists of an island, some miles from the mainland?—Two miles from the mainland.

278. With sometimes a stormy sea intervening?—Yes; it is a very fine island, full of people, and a petty session district.

Mr. *Herbert.*

279. Might any man who did not want to be summoned keep away from the post office, and so avoid getting his summons?—He might certainly do so.

Mr. Robert Fergusson, called in; and Examined.

Mr. *Fergusson.*

Mr. *Downing.*

280. You are a Queen's Counsel, are you not?—Yes.

281. And you are chairman of the West Riding of the county of Cork?—Yes.

282. How long have you been chairman of the West Riding of the county of Cork?—Since February 1872.

283. That was before the new Act came into operation, was it not?—Yes.

284. Had you been for years before that on the Munster circuit?—For upwards of 20 years I was practising on the Munster circuit, and for the greater part of that time I was one of the Crown prosecutors.

285. You have a knowledge of the action of the system under the old Jury Act?—Yes.

286. Did you approve of that system?—No; no one approved of the principles, but the results were satisfactory; the district was free from party and sectarian feelings, and the results produced intelligent jurors.

287. Notwithstanding that, do you approve of the alteration made by the new Act?—No doubt; I never heard until to day anyone in Ireland suggest a return to the old system, though much criticism has taken place; I never heard the suggestion of returning to the old principle of selection.

288. Now your experience as chairman you say is since the Act of 1871 came into operation; are you satisfied with the working of that Act?—Certainly, with certain changes and amendments which I might perhaps venture to suggest, and with the effect which time will have in getting it into working order.

289. You quite approve of a system that does not throw on a few jurors the burden of continued attendance at the assizes or quarter sessions?—Yes.

290. Do you think that the mingling of all classes in the jury-box helps very much the administration of justice in giving confidence to the people?—Yes, it helps very much the administration of justice in giving confidence to the people; in fact any mode of selection except selection in open court before the public is wholly unsatisfactory.

291. You have the power under the Amendment Act, Section 6, of discharging a juror for cause shown, have you not?—Yes; I do not think it says "cause shown," but we have the power of excusing and discharging, which I think is very beneficial.

292. Would you approve of a general power given to the judge or chairman of quarter session for any cause shown in open court, and upon oath to discharge a man from attendance and also from the jury panelled?—I certainly should.

293. And that that should be done in open court?—Yes; in my opinion everything in the way of selection should be done in open court.

Mr. *Downing*—continued.

294. You would not give the sub-sheriff the power of selection in any way?—No; in fact it is so objectionable that it would become a question with me whether the abolition of the entire system would not give more satisfaction.

295. Now the West Riding of the county of Cork is a portion of Ireland where there is a mixture of all classes of people, is it not?—There is a very considerable mixture of all classes of people.

296. It may be taken as a very fair type of perhaps the whole of Ireland, may it not?—Yes, very much so; it is, perhaps, unusually mixed as to religions.

297. Have you had in your experience as chairman since this Act of Parliament came into operation, and in one or two cases occasion to find fault with the verdicts of juries?—Never by any chance except in one class of cases which existed before and since the Act, and that is confined to one locality and to cases of one description; those were cases of assault arising out of a remnant of the old faction fighting still existing; in such cases it is difficult when they do arise (and they are not very general and they are confined to one locality) to get a verdict according to the evidence; people seem to think that they have a right to fight those things out, but that existed quite as much before the change in the law as since the change.

298. Was there any particular case that came before you as chairman where you had occasion to intimate to the jury that you were not satisfied with the verdict, and where the jury gave you reasons for their finding?—Yes, there was a case of this character where some of the members of the constabulary had been assaulted; I think it was a game or fishery case. In that case I was dissatisfied with the verdict, and I suppose I evinced that dissatisfaction sufficiently, for before leaving the box one of the jurors, to my surprise, pointed out the only weak point in the entire case, which was a most complicated case, and that was the weak point that struck myself forcibly at first. I did not think it sufficient to warrant an acquittal, but it was the only one point on which they could have acquitted.

299. When the Act first came into operation, did you find that there was an indisposition on the part of certain classes to answer to their names, or to appear in the jury-box?—Yes, the better class of jurors; the more intelligent class stood by when the list was being called, and that resulted in the men who were not accustomed, and not so experienced, getting on the juries, and that state of things exists still.

300. Are you aware that men in the rank of gentlemen thought it derogatory to serve on a jury with men who were taken from the rated occupiers?—Decidedly.

301. Has that feeling rather dissipated lately?—Yes, it certainly has; whether it is owing to

Mr. *Downing*—continued.

to the change of qualification or not, I cannot say.

302. Do you think that the present qualification is quite as high as it could be carried?—That is a subject which requires much investigation in each district. In my own opinion, the qualification ought to be raised in the county of Cork, not so much, perhaps, because it would ensure a better class of jurors at 40*l.* than at 30*l.*, but that you would thereby relieve, if it can be effected, a small class of farmers who certainly find it most inconvenient and expensive to attend as jurors. I think we should relieve them as much as possible.

303. It is principally on that ground, is it not, that you advocate the change?—It is principally on that ground; and besides that, I think public opinion leans very much in favour of an increase in the qualification, where it can be done. You will often, no doubt, get as good a juror at 30*l.* as at 40*l.*, and you may lose good jurors by raising it beyond 30*l.* My own belief is, that in Cork the qualification can be still further raised, without any mischief.

304. You speak of the West Riding of the County of Cork, do you not?—Yes, I speak of the West Riding of the County of Cork, and I believe the effect would be very beneficial there.

305. Have you at all looked to what the result of that would be, as to the diminution it would make in the number of jurors who would be liable to be summoned?—I have considered that point. I could not myself have the means of knowing, but I put it in the train of investigation, and I understood from one of the authorities best acquainted with the working of our system, that a further increase could be made, but that would require a close investigation, and an examination of our intelligent sub-sheriff.

306. The Committee had evidence before them last year, from a number of witnesses, particularly from the north of Ireland, who said there was very great hardship in summoning jurors from one district of a division to another, sometimes 20 miles, or 25 miles apart; we will take the West Riding of the County of Cork, that is what is called the division of Bantry?—Yes.

307. That consists of two districts, I believe?—Yes.

308. Are you aware that jurors have been summoned a distance of about 50 miles to attend at Skibbereen on a jury?—I know they have; they have complained to me, and I have felt it very much, and, as far as possible, I have excused them under the 6th Section; but the mischief was done.

309. Would the remedy be easy by having the jurors of the district summoned only?—I think that summoning them from the districts, and not from the divisions, would have a very good effect, and could be carried out without much trouble; the district is large enough for that purpose.

310. You know the sub-sheriff of Cork, I suppose, Mr. Johnson?—Yes, I know Mr. Johnson.

311. He suggested that there should be a separate book for each district, for session purposes, kept in alphabetical order, and that they should be summoned only from that district; do you approve of that?—Yes, entirely; a separate book may be necessary; it would be better to avoid that, if possible, but I do not think that it would cause much trouble or expense.

Mr. *Downing*—continued.

312. Now with regard to summoning jurors, have you considered that question?—I have.

313. Have you any suggestion to make to the Committee on that point?—I heard it suggested that the process server would be a good summoner, but I do not think he would be the best, nor do I think the post would be at all sufficient; I think there is a better machinery in the petty sessions districts: the petty sessions districts run into the most remote parts of the country: there is a person for the purpose of summoning, who is under the control of the magistrates of the petty sessions court, and service through him would be inexpensive, and if verified by an affidavit would satisfy the judge that he was not fining persons who were not served.

314. That record would be always there for your guidance?—Yes, I have often been in a difficulty through not being certain that persons had got the notice.

315. The sheriff having the book of each district in alphabetical order, he sends down say 40 summonses to the summons server of the petty sessions district, he gets the summonses and sends them out, and then makes an affidavit as to when and where he served them, before the magistrates; that affidavit is returned to the sheriff's office, it is produced to you as chairman, and you then have that record on oath at hand?—Yes, they have no difficulty in finding them.

316. You think the summons server is the proper person?—Yes, he is the only person that you can be sure of in remote localities.

317. That would be very inexpensive, would it not?—Yes, very inexpensive; he is a person under control.

318. Have you ever considered whether it would not be a great advantage in criminal cases if the jury were selected by ballot?—I think that in all criminal cases the jury may safely be selected by ballot in court.

319. That would be done in the presence of the Crown solicitor, the attorney for the prisoner, and the judge?—Yes, in open court.

320. Mr. Justice Fitzgerald gave the very strongest opinion in favour of that plan, did he not?—Yes.

321. And you agree in that, do you?—Yes, entirely. In my own court it would have this effect; I should have a fair selection of jurors it would remedy that difficulty of the intelligen jurors standing by while the unintelligent ones do the work, for when they were called they must attend. We should get a better and a more mixed jury in that way than in any other way that I know of.

Mr. *Bruen.*

322. You say that you would have juries chosen by ballot; I suppose you mean from the panel?—Yes, from the panel, and then taken from a box by ballot, for the purpose of getting a mixed jury, which would be also a good one; at present the men who answer to their names are the persons least experienced, and who answer because they are afraid of being fined. The experienced persons stand by, on the chance of your getting a sufficient number on the first call, and then they escape. By my plan you would get a jury well mixed, and be sure of a satisfactory verdict.

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Mr. *Bruen*—continued.

323. But why would the persons who now object to answer be less willing to stand silent when they are called under the ballot?—Because when selected in that way, by ballot, if they did not answer the judge would have no difficulty in fining them at once; I would fine every man in the first instance who did not answer.

324. But what is the difficulty that the judge has now in fining a man who does not answer?—You go along by the list when you fine; in the first instance you go on calling the names until you have got a sufficient number who have answered to their names; after that you do not go on; you have got a jury, and you do not go through the rest of the panel. When the men are called in the ordinary way, the system being not to fine if you get a sufficient number of jurors, they stand by until they know that a sufficient number have answered to their names; it is not usual in starting to fine every man on the list who does not answer.

325. Then you would have the judge impose his fine on the first time of calling the names over by ballot, would you?—Certainly.

326. But if he now pursued the same course on the first time of calling the names over, would not that be equally effective?—Yes, to a certain extent it would be so; but certainly it would not be considered so fair when you may have quite a sufficient number on the list as they are there to answer; besides, you may have a number of men taken in rotation who would answer in the first instance. Now, taking the ballot, the chance has fallen on an individual, and he must be in court for that chance; he knows how his name stands on the list otherwise, but if his name is in the ballot-box he is sure to attend, because his name might be the first called, and then if he did not answer I would not hesitate to impose a fine.

327. Of course that mode of selection would not interfere with the right of challenge, would it?—No, not in the least.

328. Nor with the right of the Crown to call on jurors to stand aside?—The right of the Crown to call on jurors to stand aside, exercised in full court, I believe is found to have a most beneficial effect; it is done in open court, not in private; in fact, it is the only mode of selection that you can have recourse to with safety. I believe that the right to order people to stand by has a good effect in getting competent jurors.

329. You have been at the assizes, and you have acted as Crown prosecutor?—Yes, but the exigencies of the appointment deprive me altogether of my circuit attendance; I had to give up going the circuit when I was appointed chairman, so that my experience on circuit terminated with my appointment.

330 You have no personal experience at assizes of the working of the Act of Parliament?—None whatever.

331. Your evidence is confined to the working of the Act in your own court?—Yes, entirely.

332. With regard to summonses to jurors, you think it should be done by the petty sessions summons server; that must be personal service, must it not?—No, the usual service of process would be enough; you serve the summons at the house, on the wife or a certain class of relatives, and that will always ensure the summons coming to hand.

Mr. *Bruen*—continued.

333. It is not personal service, but service at the house?—Certainly; just in the same way in which all process is now served.

334. With regard to the suggestion of having separate jury books for different districts, would not that add very much to the expense in forming the list?—I understand not; I have for that purpose looked into the evidence of the sub-sheriff for the county of Cork, who was examined here last year. I do not approve of his plan, so far as he suggests a different class of jurors for quarter session purposes, and keeping a separate book altogether for that purpose; that I do not approve of; but I approve of the suggestion which he made that a book should be kept for district purposes, and which, as he says, must be a very trifling expense.

335. But that book must be made out in strict dictionary order, must it not?—In alphabetical order.

336. You would be forced to have a separate book for each district, would you not?—Yes; a separate book for each district.

337. In that case, how many additional books would you have in the West Riding of the County of Cork?—I leave the machinery to the sub-sheriff; at present he must summon from the division; he cannot summon from the county at large, because by Act of Parliament he must summon for the quarter sessions from his division separately; this is simply confining it still more to the districts, instead of to the divisions. There are three divisions, and two of the divisions are sub-divided into districts already; so that it would be a very simple matter in that case.

338. It would not add any number of books to what the clerk of the peace has to make out, would it?—I do not think it would.

339. You have stated that you think the qualification for jurors should be raised in your division, have you not?—Yes, I think it should be raised for a twofold purpose.

340. But to what amount should it be raised, do you think?—That would require further investigation; but my own opinion, formed on a recent inquiry is, that it should be raised from 30*l.* to 40*l.*, it being now 30*l.*

341. That is, of course, subject to providing a sufficient number of jurors to serve, is it not?—Yes; I believe that would leave a sufficient number of jurors to serve.

342. You have already mentioned to the Committee that that would relieve from service a class of small farmers who are poor, and on whom the service presses heavily; in what other ways would it, in your opinion, act beneficially?—I think that it would give confidence in the class of jurors summoned. The general and natural opinion is, that as you go up in the scale you get a better class of jurors; it is very likely to be so; but it is certain, also, that you will get jurors who are not intelligent in the higher class, and that between 30*l.* and 40*l.* you run the risk of losing some good jurors.

343. But even above 40*l.* you run the risk of having unintelligent jurors, do you not?—Yes, you get unintelligent jurors up to 100*l.*

344. What means have you of preventing those jurors interfering with the administration of justice by serving on juries?—In several cases you

Mr. *Bruen*—continued.

you have no difficulty, and under the new system you get jurors of very considerable intelligence; there are always a sufficient number of jurors of intelligence when the panel is well selected. In criminal cases you have a right to order them to stand by; that is generally done by the Crown solicitor; he can eliminate any objectionable person.

345. But in civil cases, is it always your experience that that class of jurors whom you consider unintelligent, and to a considerable extent prejudiced, are influenced in their action in the jury box by the more intelligent persons?—I think that is the natural result of men who are inexperienced coming into the same box with experienced men; those persons having no special prejudices on the subject are influenced by the more intelligent jurors. But our experience in civil bill cases is very limited; cases of the kind very seldom arise, so that the jury question for civil-bill purposes is not much worthy of consideration, nor is the grand jury system in our quarter sessions courts worthy of consideration; grand jurors are easily obtained, and their services are not onerous. In my opinion the only work requiring revision and care is the selection of jurors for the trial of criminal cases at sessions.

346. With regard to petty juries for the trial of criminal cases, you say that you have had no objection to make to their verdicts under the new Act of Parliament with the exception of assault cases arising out of faction fights?—Yes, that is so, and those cases are not numerous. In other respects I have been surprised at the intelligence shown under the new system; I have been struck in some cases by the juries under the new system in criminal cases, selecting without any direction from me the special count to which the evidence applied, and finding their verdict accordingly; possibly some experienced juror may have told them.

347. Those were cases, I suppose, in which there was no special party feeling?—Yes.

348. But in cases where there is any special party feeling, do you find that the verdicts are not satisfactory?—Where there is this faction feeling, they are not always satisfactory; it is not a feeling disturbing the general peace of the county; on the contrary, where factions exist you may be sure that there is no disaffection; they are sometimes family feuds, which they think should be settled at home and not come into court.

349. Is it not however desirable that such cases should be settled in a satisfactory way by a jury?—Certainly, when they come before us.

350. That is not the fact under the present law, is it?—Just so, and it was not the fact under the former law, but of the two I think there is less bias under the present system than under the old system.

351. You say that in cases of assault in faction fights under the former system the verdicts were equally unsatisfactory?—Quite as much so.

352. Your experience is derived, I suppose, from your position as Crown prosecutor, because I understand you to say that you have been chairman only since the year 1872?—Yes; as Crown prosecutor I had no experience except of the old system; of course that existed under the old system.

353. There was one answer of yours to one of the honourable Members which I did not quite catch; you stated that a return to the old system would be objectionable, inasmuch as it would raise the question whether the abolition of the whole system would not be necessary; what system did you refer to?—To the jury system. What I heard suggested was not only a return to the old system, but actually to special juries in every case, for it would amount to that, and I think a trial by the judge only would be as satisfactory to the people as that system.

Mr. *Bruen*—continued.

354. How do you reconcile that answer with the answer which you gave before, that under the old system the results were satisfactory?—Because it so chanced that at the time and in the locality to which my answer was confined there did not exist any sectarian or party feeling.

355. When was that?—That applies solely to the county and city of Limerick during my time there. It is right to say that the result of the old system, though the jurors were selected from a very narrow limit, was satisfactory in producing fair verdicts, because among those men there existed during that time nothing to arouse party feeling.

356. But you think that a different state of things exist now, do you?—Not in that district, I believe; but I have always considered how dangerous that system would be if a different state of things existed. I give my evidence in favour of the working of the old system in certain districts; but even at that time men who were concerned in the administration of the law were dissatisfied with the principle, and with the existence of the power given to the sheriffs.

357. The same power is given to the Crown prosecutor now, is it not?—Yes, it is given to the Crown prosecutor, but it is exercised in open court; it must exist somewhere, and I do not know anywhere it can exist so safely as with the Crown prosecutor in open court.

358. Have you any other amendments to the Acts to suggest, besides those which you have mentioned?—I felt so much the hardship of jurors attending from a long distance at the sessions, that I did entertain an opinion which I had expressed, I believe, to some of the magistrates, that the jury system would admit of an alteration in this direction; that is to say, by confining the trial by jury to two sessions in the year, and those two the more remote from the holding of the assizes, so as to render it necessary for jurors to attend but twice a year at the court of quarter sessions; I did give that opinion, but as those opinions and suggestions require investigation as to results, on inquiring as to the result, I came to the conclusion that the expense which would be incurred to the Crown and to the prisoners in such cases would be so great, that no advantage to the jurors would counterbalance it, so I do not now adhere to that opinion which I formerly gave; I think the only change that could be made with advantage, would be the raising of the qualification and a change into districts instead of divisions, so as to relieve people as much as possible from the onus of attending.

Mr. *Law.*

359. You say that you have noticed a difficulty in constituting juries, from the indisposition of some of the better classes to attend the courts?—Yes.

360. Yet supposing those men to have been summoned, and not to have answered, they are excused

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excused from further attendance, I believe, until their rotation time returns?—Yes.

361. Would it be a good thing, do you think, if there was a general calling of the jury panel, say 40 or 50 names, before opening the business of the court, formally calling over the panel, and then and there fining every juror who did not attend?—Yes, I think that would have a good effect.

362. The jurors are summoned to attend at the opening of the sessions or assizes, are they not?—Yes.

363. At present I understand that if you have got sufficient jurymen to do the business of the court, all the others who have been summoned, whether they attend or not (and many of them do not attend), are excused from attendance until their turn comes round again?—Yes.

364. The natural course would be, would it not, to enforce the attendance of all those who had been duly summoned by calling the list over, and fining every man who did not appear?—Yes, and no hardship would follow, because the fine is conditional, for in the case of persons not appearing, if they show good cause, the fine is excused; that would be a vast improvement.

365. And that would get over the difficulty which you have mentioned about the more experienced ones waiting until the names of those less experienced have been called over?—Yes; but of course it would cause a little delay.

366. You have about 30 or 40 names, I suppose?—Yes.

367. At the assizes it is usually about 300, I believe?—Yes.

368. At the assizes the long panel is not called until some felony has to be tried?—Yes.

369. Then the practice is to call over the whole list, not in order to fine anybody, but in order to see who is there?—Yes.

370. The more experienced class of jurors know that is only a matter of form?—They do.

371. Would it not be well at the assizes as well as the sessions to call over the list at once, and fine conditionally every man who did not answer to his name?—I do not think that the new system will even get a fair trial until that is done.

372. Of course in any system that has been suggested, the object is to spread the service of the jurors over as large an area as possible?—It is.

373. Therefore at first we must have a great number of inexperienced jurors, whatever ability they may have?—Yes.

374. But that is only temporary?—Yes. When the change was made from the old system, the necessary result was to bring into the jury box persons thoroughly unacquainted with trials, and for a time that would of course produce startling results.

375. Of course that is only temporary?—That is only temporary.

376. The old system was for the sheriff (perhaps to save himself the trouble) to call on a number of persons who lived near and were sure to attend, was it not?—The collectors first made a selection by leaving out their friends or whoever wished to be left out, and next came the sheriffs' selection, and then the persons who summoned left out their friends, so that the old familiar faces which appeared under the old system were those

Mr. *Law*—continued.

of the jurors who had no objection to come to town during the assize week.

377. But they were admirable jurors?—Yes; so much so, that special juries were not necessary, but at the same time the system was open to the most mischievous effects which occasionally arose.

378. As I understand your answer, your approval of the old system was confined to the county of the city of Limerick?—Yes, and even there the principle was disapproved of, though we approved of the special results in that locality.

379. I presume that in the West Riding of the County of Cork there would be a difficulty in sending summonses for jurors through the post by registered letter?—Yes, the postal arrangements are so bad that I could never think of fining a man on a service of that kind.

380. In the more distant parts of the West Riding, farmers and others would, I presume, be a long way from the Post Office?—Yes, a long way off.

381. And therefore the letters would probably not be delivered?—The letters would perhaps not be delivered, whereas the petty session server knows everyone, and he is obliged to go everywhere.

Mr. *Plunket.*

382. You say that public opinion leans very much in favour of an increase in the qualification, and I think that you suggested that it should be raised to 40 *l.*?—Yes, up to 40 *l.*; but the qualification must vary according to the exigencies of each place. I understand that in Kerry it could not be raised with safety, and so in other places; but where it can be done, it ought to be done for the double purpose of relieving the poorer of the jurors, and getting the advantage of obtaining a better class of jurors.

383. I suppose you mean by safety, safety with regard to obtaining a sufficient number of jurors on the panel?—Yes.

384. You say that the reason of public opinion taking that direction is, first, to relieve the poorer class of jurors; what is the other ground?—That the chances are in favour of obtaining a more intelligent class as an obvious result.

385. Would you not say also that that opinion was, to some extent, consequent on the ridiculous scenes of the last few years, which led to the amendment of the Act of 1871, in the year 1873?—No doubt. I have ascertained that the original Bill never contemplated so low a qualification. It was in Committee that it was reduced to 20 *l.* It was 30 *l.* in the county of Cork in the Bill that was then introduced.

386. But you will agree that the opinion which necessitated a change in the law last year still exists to the extent of further raising the qualification where it is practicable to raise it in order to have a sufficient number of good jurors on the panel?—Yes.

387. But when you raise the qualification in that way, do you not lose the services of a good many intelligent jurors in the lower class qualification?—You must pass over certain intelligent jurors in that case; but still the great advantage of leaving the less intelligent jurors at home is more than sufficient to counterbalance the loss.

388. But you admit that there are a great many excellent jurors in the class which would be

Mr. *Plunket*—continued.

be passed over by raising the qualification?—I am sure of it.

389. Do you not think that it is desirable to have representatives of different classes of society on the same panel?—Yes.

390. That advantage you would almost forego by raising the qualification to that extent, would you not?—No, I think not.

391. Is it not obvious that, if you pass over all those classes of society who are represented by a rating less than 40 *l.*, you forego that advantage to a great extent?—I think, as to persons, say of 30 *l.* rating, that those rated at 40 *l.* would quite sufficiently represent their interests.

392. Would not you think it desirable, in order to give confidence to the people to have, as far as possible, every class of the community, where you could find competent jurors, represented on the panel and in the jury box?—That would lead to this result, that you may go down the scale to any depth, no matter how low.

393. That is another question; but the answer I want you to give me is this, whether it would not have the effect of losing the advantages of mixing the various classes on the panel and in the box if you raised the qualification to 40 *l.*?—No, I do not think it would. Take, for example, the moderate farming class; I think that persons rated at 40 *l.* would fairly represent the farming class in a district, and that it would be attended with less mischief than going down to a lower rate. I think 40 *l.* would represent people holding at 20 *l.* quite well enough; but if you go down, following your suggestion to, say 10 *l.*, then as to representing them by jurors, I should not consider that necessary.

394. If you went down to 10 *l.*, you would scarcely find any person at all qualified, would you?—That was the qualification under the old system.

395. But you are aware that it was a total change of social circumstances that rendered a change in the jury law necessary, because you could not find proper persons at the old qualifications. My question points to this, if you have a mere self-acting machinery, then, in order to avoid scandalous exhibitions in the jury box, you must have a very high rating, whereas if you have any process of selection, by the sheriff, for instance, or any other proper authority, you need not restrict the qualification so much, is not that so?—Certainly, if you could have a safe process of selection, the qualification would be of secondary importance.

396. You say that in the two years experience which you have had of chairmanship, you find the Jury Act of 1871 to act sufficiently well?—Yes, I find the Jury Act of 1871 to act sufficiently well

397. That is to say, with the exception of those cases of faction fighting?—With the exception of those cases of faction fighting.

398. I suppose, that in point of fact, you have not had cases before you involving religious or political considerations?—No, there is very little of that in the south of Ireland.

399. I think that Protestants and Roman Catholics live very well together in that part of the country, do they not?—In the south of Ireland they live so well together, that you must always look for a cause of dissension before you find one, and unless fresh causes are introduced, nothing can be more perfect than the harmony which

Mr. *Plunket*—continued.

prevails between the Protestants and the Roman Catholics.

400. Your evidence of the good working of this Act of Parliament is entirely confined to your experience at the Court of Quarter Sessions at which you preside?—Yes.

401. How long did you say you were on the Munster circuit before you gave it up?—More than 20 years.

402. During all that 20 years you do not know of any case in which the old jury system worked unfairly or with partiality, do you?—I could not fix on a case. It was quite satisfactory, but as I say, it was often under discussion; they were surprised at the result and they objected to the principle.

403. It was very much discussed in the national press, was it not?—I do not refer to that, I refer to our own discussions; I was not thinking of the national press.

Mr. *Lopes.*

404. Do I understand you to say that you would give the under-sheriff no power of selection?—I would give no power of selection to any one except in open court. I would give no power of selecting jurors to the under-sheriff. I would have the legislature specify the qualifications, so that there should be no power of selection left on that ground, and then when it became necessary to select, as it will always be, I would have it in open court before the public, and subject to criticism, so as to test its fairness.

405. The precept goes to the sheriff to return the panel, does it not?—Yes.

406. Then, practically, the under-sheriff would have to make the return, and surely he would select the jurors, would he not?—He must select them in rotation, in alphabetical order. He has no power to take one out of his place; that would be a cause of challenge under the Act, I think.

407. Then you must have a separate jury book for the district, must you not?—There is a general jurors' book.

408. If there is a general jurors' book, and the sub-sheriff is bound to take them strictly alphabetically, how does he manage in a case where he has to return jurors for 30 or 40 miles off?—He must go through the same routine.

409. The persons being perhaps 50 miles off?—Yes, of course it would be well if that inconvenience could be remedied; and it is remedied to some extent for quarter session purposes; but in that case feeling the inconvenience on the jurors who have to attend four times a year, the Act requires him not to summon them in that way for quarter session purposes, but to summon only persons who live within the division in which the case is to be tried.

410. Then why should you not have one general jurors' book for the whole of the county, reposing in the sheriff simply this discretion, that he should select the jury solely with regard to the district in which the jury is required?—I see no objection to that; that is carrying out the principle which is beneficial at the quarter sessions; but I seek to extend that benefit still more by extending it not alone to divisions but to districts.

411. The under-sheriff would have this information on the jurors' book of the locality in which the juror lived; you would be able to see whether a man lived in such a quarter, that he would

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would he a desirable person to use in the locality where the jury was wanted?—He would not have the power of selection, but he could bring people from the less remote districts at a great saving to the jurors; it would not interfere with the impartiality of the jury.

412. You would give the sheriff, or the under-sheriff, practically, a discretion to that extent?—Yes.

413. You would not be afraid to do that?—No, I am rather seeking to do it.

414. You said, I think, that you would give the under-sheriff no power of selection?—That is the present law; but it is only creating districts. With regard to giving the magistrates a power of revision, I do not approve of that at all. It was tried and found wanting, and I think the objections to it are very strong; it could not be done.

415. Do you happen to have read the clauses in the Bill, which I am bringing into the House of Commons this year, for England, with regard to that particular point?—I sent for the Bill from Ireland, but I could not get it till now.

Chairman.

416. With reference to the last question put to you, I wish to draw your attention to the 19th clause proposed for the English Bill; will you be kind enough to read it?—We have the power referred to in that clause, and we find it beneficial in our revision. The 19th clause runs thus: "The overseers so producing the lists, as hereinbefore directed, shall answer upon oath, or affirmation, all such questions touching the same as shall be put to them, or any of them, by the justices then present, and if the name of any man not qualified and liable, or unfit to serve on juries, is inserted in any such list, it shall be lawful for the said justice, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries, to strike his name out of such list." I should object to a part of that clause, namely, that the justices should do it from their own knowledge; that would be highly objectionable in Ireland, but it may be different in England. We can examine all the overseers and the poor law collectors in court, and they are bound to tell us any objections to jurors, and we find that that process sufficiently removes our objections; but to leave to any man the power of putting off a juror without showing cause publicly, would in Ireland be objectionable.

417. Do I understand you to say that the only proposal contained in that clause, so far as it applies to Ireland, which you object to, is in the words "or upon their own knowledge"?—I think so.

418. In recommending the scheme which you have mentioned to the Committee, by which summonses might be served on jurors who were liable, has it occurred to you that the jurors summoned might possibly sometimes improperly escape the service of the summons?—It is not at all likely; in the first place the man who serves the summonses is in the habit of serving them for the petty sessions, for every man in Ireland

Chairman—continued.

comes before the petty sessions some time or other. It is a matter of routine to serve them.

419. What sort of position are those persons in who would serve those notices?—Their position is low enough it is true; about the same as that of the ordinary process servers; but they are under the immediate control of the magistrates and of the petty sessions clerk. There is a vigilant watch kept over them in that way, and any error on their part would be visited upon them immediately.

420. Suppose a juryman who did not wish to attend offered one of those men a few shillings if he would not prove the service of the summons, what would be the result?—I would have him compelled to send up an affidavit, and in that affidavit to explain why he had not served such and such a person.

421. You think that any collusion would be discovered?—Yes, it would be discovered at once.

422. Who appoints those servers?—They are appointed by the magistrates.

Mr. *Downing.*

423. There is often great competition for the office of server, is there not?—Yes, it is a very good office, and the server would not risk the loss of it.

Chairman.

424. When you spoke of the 30 *l.* qualification in the West Riding in the County of Cork, as being below that which might be adopted, I do not think you stated how far that 30 *l.* represented the real annual value?—£. 30 in Cork, so far as I know, would represent about 45 *l.* value. I think 30 *l.* valuation would be about 45 *l.* rental.

425. I suppose you may put on a third, whatever the figure may be, in order to arrive at the real value?—Yes, that is very much the case in Ireland at present.

426. Would that, do you think, apply more to the county of Cork than to other parts of Ireland?—No; Cork, so far as I know it, is something higher.

427. But there are parts of Ireland where the valuation and the rentals are more nearly alike than in Cork, are there not?—There are parts of Ireland where the valuation and the rental are more nearly alike than in Cork; and there are parts of Ireland where they are about the same; that was a result of peculiar circumstances under the old Valuation Act; tillage land was valued highly, and up to the mark very nearly. Pasture land, which has become very valuable within the last 20 years, is, as a rule, valued at not more than half.

428. Would not the result of this plan in the county of Cork be this, that you would have under the present 30 *l.* qualification a higher class of men as jurymen than you might have under the same nominal qualification in other counties?—Yes.

429. Therefore, that qualification, though it is sufficient for the county of Cork, might not be enough for other counties?—Yes, certainly; but giving up, as we do, the power of selection, I am in favour of raising the qualification.

430. You mentioned a case of assault on the constabulary in which you were dissatisfied with the verdict; what were the grounds of your dissatisfaction?—I considered the evidence, which

was

Chairman—continued.

was very complicated, given by two members of the constabulary satisfactory; it occurred at night, and the evidence satisfied me that the offence had been committed, but the jury returned a verdict of acquittal. I felt there was only one part of the evidence which was weak, but on inquiry and investigation I got over the difficulty during the process of the trial.

431. Do you think that that verdict arose from any feeling on the part of the jury against the constabulary generally?—No, I am afraid that there was a very strong feeling against the fishery laws, and on that account I felt dissatisfied.

432. In that case do you think the jury gave their verdict against an unpopular law rather than on any other account?—I thought they gave their verdict because it was against an unpopular law. The jury before they left the box, after having given their verdict, saw I was not satisfied, and one of their number stepped forward and pointed out to me their reason for arriving at that verdict. He said, "There is this part of the evidence with which we were not satisfied;" referring at the same time to the only part of the entire case which was weak.

Mr. *Downing.*

433. Let me call your attention to the effect of what you suggest now to the Committee, that is to say, to the subject of raising the qualification to 40*l.*?—That would require further investigation.

434. Cork is the largest county in Ireland; the number of jurors in 1873 was 8,425 for the county; now, when the Amended Act passed, raising the qualification from 20*l.* to 30*l.*, it struck 2,729 off the total amount, reducing the number to 5,696; you now suggest to raise the qualification from 30*l.* to 40*l.*, that would strike off, at Cork, 1,518, reducing the total number to 4,128, much more than the moiety?—All that has to be considered. I felt the difficulty, and as far as I could through the officials, inquired into the matter, and only this morning I obtained a communication, in answer to mine, to say that the qualification could be safely raised, and that it would leave us a sufficient number of jurors.

435. Now, take the West Riding of the County of Cork, over which you so worthily preside as chairman, two-fifths of the county is generally supposed to be the West Riding, both in extent of value and population; two-fifths of the total number of jurymen would be 1,651; now, in the West Riding of the County of Cork you have to attend four times a year; you have nine quarter sessions, have you not?—We have 12.

436. Of the 1,651, a number of those are obliged to attend the local assizes twice a year, are they not?—Yes.

437. Would you have a sufficient number remaining in that case for the grand juries and the petty juries in the West Riding of the County of Cork?—My opinion is derived from my inquiries; I think we should have a sufficient number still, but that requires further investigation through the sub-sheriff, and if I were to legislate on the subject I would have the sub-sheriff examined closely with regard to the result.

438. Now with regard to the grand jury, you do not think they are of very much importance at quarter sessions, do you?—The grand juries are wonderfully good, and I would make no change in that respect, nor would I exempt any persons from attendance because they attend on the grand jury; it is only two hours of duty, which is admirably done, and I have never had cause to find fault with them.

Mr. *Downing*—continued.

Mr. *Bruen.*

439. You have stated that every man comes at one time or another before the court of petty sessions in Ireland; you mean either as witness, prosecutor, or defendant, I suppose?—It is a civil jurisdiction, as well as a criminal, and there is no man that has not come before the court; for if a servant goes wrong, his master has him summoned before the magistrate; and there is the small debts jurisdiction also. The magistrates in Ireland exercise very extensive jurisdiction, and most beneficially and admirably are their duties discharged.

440. That assertion of yours involves a very considerable amount of litigation, does it not?—Yes.

441. Perhaps you would like to confine that observation to the district in which you live, because I can assure you that with regard to the district in which I live it could hardly be said to be true?—Every man has a favourite district, but every man I know has come before the petty sessions.

442. There is one more question which I wish to ask you with regard to clause 19 of the Juries Bill now before the House of Commons, and which you read just now; it says that the overseers shall answer upon oath such and such questions, and then it says, "it shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge that he is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries, to strike his name out off such list;" should you be satisfied if that power was conceded to the chairman of the court of quarter sessions?—I would not let the chairman do it on his own knowledge.

443. Would that be because you do not think he would have that knowledge?—I do not think that he would have that knowledge, and even if he had that knowledge, he ought to investigate the matter on oath, and it ought to be done in open court, otherwise that opens the door to much mischief.

444. But you would admit this other disqualification, "or in other respects, unfit to serve on juries," would you not?—Yes, I would admit anything that you can prove by evidence in open court.

Mr. *Verner.*

445. With regard to that part of clause 19, which says, "or upon their own knowledge," even if that applied to the whole bench, you would not admit it, would you?—No, certainly not; it is a mischievous and dangerous power, and in Ireland it would be most unsatisfactory.

Mr. *Mulholland.*

446. I think you advocate the raising of the rate of qualification, on the ground to some extent of its being a great boon to the small class of farmers?

Mr. *Fergusson.*

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Mr. *Mulholland*—continued.

farmers?—That is my principal object; men who work their own farms by manual labour are taken from home in the spring of the year, at a time when their services at home are most important to them, and it should be a strong necessity that should justify that course being adopted.

447. You have heard that the effect of raising the qualification to 40 *l.*, would be to diminish greatly the total number of jurymen, have you not, so that whatever freedom from labour the lower class would gain, would be thrown as an additional burden on the upper class, would it not; I mean that those rated at above 40 *l.*, would have twice as much work thrown upon them?—A man of that class can bear far better being away from home, he does not mind coming to town; I would throw as much as possible of the work on that class.

Mr. *Law.*

448. It was suggested by some of the witnesses on the former inquiry, for court of quarter sessions purposes, the grand jury might be dispensed with; what is your opinion upon that point?—There would be no object in it; it would be a mischevious thing to do, and without any beneficial results; they discharge their duties admirably; they sometimes do not find bills, but it never occurred in any case where I did not think they were right.

449. Would it, in your opinion, be any advantage for criminal purposes at quarter sessions to confine the criminal trials to one or two towns in the county?—It would do no good, I think; I contemplate confining them to two sessions a year, but confining them to certain towns would not, in my opinion, produce any good results.

Monday, 11*th May* 1874.

MEMBERS PRESENT:

Sir M. Hicks Beach.
Mr. Bruen.
Viscount Crichton.
Mr. Downing.
Sir Arthur Guinness.
Mr. Henry Herbert.
Marquis of Hartington.
Mr. Law.
Mr. Lopes.
Mr. Mulholland.
The O'Conor Don.
The O'Donoghue.
Sir Colman O'Loghlen.
Mr. Plunket.
Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL HICKS BEACH, BART., IN THE CHAIR.

Mr. WILLIAM ORMSBY, called in; and Examined.

Mr. *W. Ormsby.*
11 May 1874.

Chairman.

450. I BELIEVE that you have been for some years Sub-sheriff of the County and City of Dublin?—I have.

451. You were examined before the Committee of last year on the Juries Acts, were you not?—I was.

452. Do you adhere generally to the evidence you then gave?—I do.

453. Can you state to the Committee any facts, within your experience, that have arisen since that time, bearing on the matter?—I can. I have tried to see how the Act has worked ever since.

454. How many assizes and sessions have been held in Dublin since that time?—It is different in Dublin from what it is in other counties. We have commissions instead of assizes. We have six commissions in the year, and then we have all the after sittings besides. It is different in other counties; there are only two assizes.

455. Perhaps you will be kind enough to tell the Committee how many occasions have arisen of whatever kind since you gave evidence last year, on which matters connected with the formation of juries came under your notice?—I could tell you the number of jurors I have been obliged to summon since I gave evidence last year, but it would take some time to calculate the number of occasions. For the city of Dublin, last year, I was obliged to summon 4,476 jurors.

456. Were they common jurors only?—No, they were the jurors altogether; we had in each court 48 special and 48 common jurors. That is speaking of the entire year. We had six commissions in the county in the course of the year.

457. How many did you summon for those commissions?—Altogether we summoned 3,192. We have masters' juries, and lunacy juries, and several others, and altogether those are the numbers of the jurors. I have the book marked off, and those are the numbers which have been summoned. A great number of the jurors were under the impression that they would not be summoned more than once in every two years.

Chairman—continued.

458. I think you stated to the Committee last year, that only six or seven letters of the common jury list of the city of Dublin were left unexhausted?—Yes.

459. When did you exhaust that list?—I could not speak from memory to that point.

460. But I suppose that it has been exhausted?—Yes; I was going to say that we had to go back again, and had to summon twice, a large number of the jurors.

461. In doing so, did you make a point of summoning those who had not served?—No, that is what I want to mention; under the Act of Parliament, as it stands at present, those who had not served got the same credit as those who served.

462. Therefore, did it happen to a good many people to serve twice on juries in the city of Dublin during the last year?—Yes; and even if the whole of them attended, several of them would have to be summoned twice over. On the general jurors' book there were, last year, 3,235, and on the special jurors' book, which is included in the general, there were 1,272; but the special jurors, and the general jurors, are all together; the special jurors are taken from the general jurors; on the long panel we summon most of them that come, both special and common; that was last year. This year, the number on the general jurors' book, for the city of Dublin, is 3,312; on the special jurors the number was 1,338, and on the county list it is larger; the number of the general jurors was 3,682; the number of the special jurors was a great deal smaller, it was only 641. That was all that was on the special jurors' book for the county this year, but out of those 641 there is very nearly one-fourth that should not be on the list at all.

Mr. *Downing.*

463. Why?—Because some of them are dead; some are barristers, some are attorneys, and a great number are over age, and several are professional men, and old military men. I have no power of exempting anyone. I am supposed not

Mr. *W. Ormsby.*

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Mr. *Downing*—continued.

to know anything about it. I summon them just according to the book.

464. The special jurors' list is anything but correct then?—Both lists are anything but correct.

465. Does that apply to the city as well as to the county?—Yes, it does. For instance, take the managers of banks; they are men who cannot very well attend, and they say to me, we may be fined 100 *l.* or 1,000 *l.*, but we cannot leave the bank. Then take again the managers of railways; the manager of the Midland Railway the other day was forced to attend, but he said it might occasion some very serious thing going astray on the railway Those are men that I think ought to be off, and cannot well attend.

466. Do you think they should be off the list, or that they should be on the list, and yet not compelled to serve?—I think they should be exempt.

467. You think that they should be off the list altogether?—Yes, off the list altogether; there is no use in putting those on the list who cannot really attend.

468. Do you suggest any limit to that; you speak of managers of railways and managers of large mercantile establishments, do you not?—Yes, bank managers.

469. What line of definition would you propose to draw?—I would not say bank clerks, but the heads and managers of those large establishments.

470. But would not any exemption of that kind include a very large number of persons?—No, it would not.

471. It might be difficult, might it not, to say that the manager of a large mercantile establishment should be exempt, and not the manager of a small establishment?—That is a different thing; mercantile men complain very much of two, three, and four being summoned out of the same firm; now I think that is a very hard thing.

472. They complain of being summoned out of the same firm because their names are together on the list?—Yes, just so; I have had four men out of the same firm summoned for the same after sittings.

473. Do you adhere to the opinion you expressed last year that the common juries in the city of Dublin were good?—Yes, the common juries in the city of Dublin are very fair.

474. But I think you gave it as your opinion that the special juries were not so good?—Just so, not so good; but I think I said that was in the county of Dublin, not in the city of Dublin; for instance, there are men in the county who are highly rated who are dairymen, and some very illiterate men indeed who can neither read or write.

475. You would have an exclusively household qualification, would you?—I would have a qualification for any amount you would like to put on: 500 *l.* if you please.

476. What are the special changes in the present law which you would recommend?—I think without allowing some person to have the control of the selection of juries it is impossible to have a good jury; that is to say, to have a correct jury; in fact, I think it will be difficult to have satisfactory trial by jury if matters go on in this way.

477. In whom would you propose to vest that

Mr. *Downing*—continued.

power?—So far as I am concerned I would not wish for it for the sheriff or sub-sheriff; but at the same time he is the man who knows more about it than anyone else; I am quite sure of that. Under this Act of Parliament now the sheriff is saved a great deal of trouble and annoyance from people coming to him, for he can simply say, "I cannot leave out anyone, you must go to the judge, no matter what your excuse is, I have no power in the matter"; that saves me much trouble in one way.

478. But do I understand you to say that you think it is necessary for the proper formation of juries that some power of that kind should be vested in the sheriff?—Yes, I do, or some other person who would take the trouble of inquiring and going into it.

479. And that rather with a view to the correctness of the list than to the quality of the juries?—To the correctness of the list, the putting off improper men; there are a great number of men who are on the jury-book now who know nothing at all about how to try a case; they will just do anything they are told. I do not believe that they pay the slightest attention to it; I mean a number of new men or who never were on juries before, they know nothing at all about how they should find a verdict; in fact some of the foremen do not know how to sign the issue paper.

Sir *Colman O'Loghlen.*

480. Do you mean special jurors?—Yes, special jurors; special jurors are in some cases worse than petty jurors, and the grand jurors are very bad indeed; there are a lot of attorney's clerks now on the special juries. I know a judge's tipstaff who is a special juror; he is a very good man and very intelligent, but he is not a first class man for a special juryman.

Chairman.

481. Were the grand jurors included in the figures which you gave us?—Yes, the grand jurors are on the special jurors' book.

482. Did you not last year recommend a 40 *l.* household rating as a qualification for special jurors?—Yes, for the city of Dublin.

483. But what for the county?—I think it was 50 *l.* for the county, but I am not quite sure; I have not read my evidence since, and I have really forgotten it; I think any rating or qualification you put in the county of Dublin will not ensure you good special jurors on account of the class of men that they are. There are very good men in the city and in the suburbs; for instance, in Rathmines and Rathgar, and round there, who are not very highly rated, and who are very good men; but all those dairymen and that class of men understand nothing about it, and this shows that a mere rating qualification is no criterion of the competency of jurors.

484. Would not a high qualification, if it was necessary that it should include a house, strike those men off?—Some of those men have very good houses; some of them have made a lot of money and purchased land; some of those milkmen have bought a good deal of property.

485. What you say with regard to special jurors applies also to grand jurors, I suppose?—Yes; certainly.

486. Have you found any difficulty with regard

Chairman—continued.

gard to the services of the summonses?—None whatever; I serve my summonses by post, and I find it very convenient and very certain; there are no excuses, and they cannot pay the server for letting them off. The only thing is, that in some instances men are returned who have left their places of residence, it may be two years before, and those summonses come back of course; but I know that there cannot be any bribery or treating when they are sent round by the Post Office; but if those that return the names on the jurors' book would return their proper residence, I should say nothing would be better than the way in which we serve summonses in Dublin.

487. I understand you to say that you find a good many persons who are summoned do not attend?—Yes, a good many; for instance, I have summoned men who are in business, who cannot possibly leave, and they say they never were on juries before.

488. Could you give the Committee any idea of the proportion of those who are summoned and do not attend?—I would say one-third of the whole; a great number of them are fined.

489 I was going to ask you whether there were many cases of fines for non-attendance?—Yes, a great number are fined, and then they get time to appeal, to make excuses; and they come before the judges at the next after sittings, and they generally get off somehow.

490. Then very few fines are really enforced?—I made out the accounts just before I came away. They first go to the clerk of the peace; he writes to say that they are fined, and asks them to come and settle it; that is after the judge has inflicted the fine; then as to any who do not come in and settle with him, he sends a warrant to me to collect; but, of all the fines that were imposed, the last account I made out was 28 *l.*

491. Was that for the year?—Yes, for the year.

Mr. *Bruen.*

492. What was the highest fine?—£.5; it is generally reduced to 2 *l.* Then there are people who are fined sometimes who say you may levy it, but I am not worth it, but that is the fault of the late collector who returns them; there have been some returned who were not possessed of 40 *s.*

Chairman.

493. What is the highest number of times that any person has been summoned by you on a jury last year?—The same person may have been summoned four times.

494. Would there be many cases as high as that?—Yes, in some instances; they do not get credit for serving on the grand jury, and those men may be summoned in another week or fortnight, say on a probate or some other jury; they are not marked off when they serve on the grand jury.

495. Do you hear many complaints about the payment of jurors?—Yes.

496. Have you anything to suggest to the Committee on that point?—I think it is a very great hardship on the jurors; some jurors have to attend for a fortnight there, and may be they will be only on one case; that is very hard on a man who comes from a considerable distance, and at a good deal of expense; I think I would

Chairman—continued.

pay special jurors 1 *l.* a day, and I would pay petty jurors, if they attended, 5 *s.* a day; I think that would ensure a good attendance, and that it would cover any expense that they might be put to.

497. Whether they actually tried a case or not, you would pay them?—Yes, when they were actually in attendance; not those who did not attend, but those that really attended; I think also that those who do not attend should be summoned again before the parties who do attend and serve, perhaps for a fortnight, are summoned again. But the parties who do not attend at all get the same credit as those who do. I have no power of going back.

498. You think that that power should be given, do you?—Certainly.

499. Can you inform the Committee of any special cases in which a failure of justice has arisen, owing to the bad quality of special jurors or of grand jurors in Dublin?—I cannot; I do not mind much how the verdicts are, if I can get jurors; I have plenty to do with the Six Courts.

500. You have not paid much attention to that subject, have you?—No; I do not pay any attention to that matter; I have seen the issue paper sent up to them to sign, and they do not know where to sign their names; some of them could not spell the word "guilty," and even some of the foremen of the juries could not spell it properly.

501. Did that happen in many cases?—Yes, in several cases.

502. Is there any other statement that you wish to make to the Committee?—I heard Mr. Hamilton examined, and I wrote to Dublin to get the form of oath taken at the court by the high sheriff and the sub-sheriff before they go into office, which I have here; and if either one or the other returned a wrong panel, or at least a partial panel, he would be perjured; it is a very strict and long oath, and I can hand in a copy of it—(Vide *Appendix*). I may mention that there have been Protestant and Roman Catholics on the same trial, and they always agreed. At the time of the Fenian trials, I have had six Protestants and six Roman Catholics on the jury who have agreed.

Mr. *Downing.*

503. I think from your evidence the Committee may take it for granted that the county and city of Dublin are rather exceptional?—I am only speaking of the county and city of Dublin, which I perfectly well know.

504. You say that a good many people, such as dairymen, and that sort of men in the county of Dublin, hold plots of land?—Yes.

505. And they are not generally as intelligent as the ordinary people who occupy lands and farms, are they?—No, some of them are not.

506. And I suppose there are a great number in the county of Dublin who reside in the city, but go into the country for the summer, having villas there?—Yes; they reside there altogether, in fact.

507. Are those parties summoned on juries?—Some are; those whose names are on the book; in fact, every man whose name is on the book is summoned, but the names of many who should be on the book are omitted.

508. How does that happen?—I do not know;

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Mr. *Downing*—continued.

I have nothing to say to the making out of the book.

509. But there must be a fault with some official, must there not?—Yes, of course there is some person who makes out the book.

510. Then the Statute is not to be blamed for that?—No, I do not say that it is. Another way is, that they do not pay rates in their own names, they pay rates in their master's names, or perhaps their mother's names, or they get out of it in some such way.

511. Is that in order to avoid serving on the jury?—Yes, I am sure of it.

512. I understand you to say, that you have no reason yourself to find fault with the verdicts given in Dublin under this Jury Act?—I could not tell how the verdict is. I never wait for the verdict, unless they are particular cases. I have so many courts to attend to. There are six courts sitting at the same time, but I see that the juries are all right.

513. No doubt, if there was any striking case, you would have heard of it, would you not?—No doubt; certainly I should.

514. During the Fenian trials, you had no reason to complain of the verdicts, and yet they were mixed juries?—No, we had no reason to complain of the verdicts; the verdicts were all highly approved of. I had the sole management of the panel myself.

515. The panel has been made out alphabetically since the passing of the Act, has it not?—Yes, but it was not during the time of the Fenian trials.

516. We know the way in which you have discharged your office, and there is no doubt you have done it with great credit to yourself; but suppose there was a case where the sheriff had empanelled a jury entirely composed of one creed, or one line of politics, you would not approve of that?—No.

517. You are aware, are you not, that there are no means of fining a sheriff for such an offence?—Yes, but he takes an oath, and I do not think that there is a sheriff in Ireland who would break that oath. I know many sub-sheriffs, and they are gentlemen, and, I think, incapable of anything like such perjury.

518. Do you think it can be an accident when 12 men of one religion are placed in a jury box to try a man of another religion?—I certainly do not think that any sheriff would perjure himself, and if you read the oath I think you will agree with me.

519. I am quite sure that you yourself read it, and remember it?—Yes, I remember it indeed.

520. Now, with regard to the bank clerks, would you exempt them?—I do not know that I would. No, I think I would not exempt them.

521. But do you not think it a very hard thing that a banker's clerk, with 100*l.*, or 120*l.* a year, should be summoned on a jury?—Yes, I think it a very hard system, but it would be very hard to know where you are to stop in exempting people. A man in another person's employment, say a traveller or an agent, might think it very hard, and I find that a great many people say they will lose their employment through it; there are very few men who are not in some way or other under other people.

522. In your examination last year, at Question 4799, on being asked, "You would like to retain that power of selection, would you," you say, "I would not"?—I say so still.

523. "But I think there is no man more competent to form those panels than he is"?—I am sure of it.

524. "He is the responsible person"; now, in whom would you vest that power?—I say I do not know who could do it so well as the sheriff; but at the same time, what I said then I adhere to; that I have not the slightest wish, and I think very few sheriffs would wish, to have that power; but I think there is no person who has the power of knowing so well as the sheriff.

525. Do you think that a very close revision of the jurors' list by the chairman of quarter sessions or by a magistrate, with the assistance of all those parties who are forced to make the returns, namely, the rate collectors, and so on, attending before the chairman, would enable him to revise the list effectually?—Yes; only the returns are all humbug that they send in, they are not at all correct; in Dublin it is a real farce; there are men on the list who have been dead three or four years, and men who are 80 or 90 years old, or men who are bedridden; and if there is not some change, you may as well do away with trial by jury altogether.

526. But I suppose if that return were correct it would do?—Yes.

527. Under the Act of Parliament there is power to fine very heavily those parties who make improper returns, is there not?—I believe there is; I have spoken about it dozens of times, and I do not know any one who will take it up; I even spoke to the Attorney General about it two or three times.

528. Now, with regard to those very ignorant jurors which you spoke of; I suppose in your experience before the passing of Lord O'Hagan's Act you had seen ignorant people also in the box?—Very seldom; scarcely ever.

529. That is in Dublin, is it?—Yes, that is in Dublin.

530. When you were examined last year, you were asked to give a list of the grand jurors of which you complained so much, and you gave a return?—Yes; I gave a return of several juries.

531. But you gave one particular return with regard to the grand jury of which you complained so much as to their intelligence; I mean in the case where one of them asked you to examine the witnesses and find the verdict?—Yes.

532. Is that the return (*referring the Witness to a return at the end of a Blue Book*)?—I suppose it is.

533. Do you not find in that four persons returned as "gentlemen"?—Yes.

534. And one is an hotel keeper?—Yes.

535. And one in business?—I do not remember those returns at all; they are never correct.

536. But that is the return of the jury to whom you referred?—Yes, but I took them from the jurors' book; many a man is put down as a gentleman or an esquire who is an attorney's clerk.

537. Might not an attorney's clerk make a very intelligent juror?—Some of them might; I have some on the juries who were very intelligent, but in my opinion they are not the class of men that should be on special juries.

538. You refer now rather to the class of men than

Mr. *Downing*—continued.

than to the question of competence?—Yes, a man that earns 20 *s.* or 40 *s.* a week is not a man that should be where there are gentlemen, they may be mixed up in the case themselves.

539. I suppose you know that Lord O'Hagan's Act has destroyed that guinea pig system in Dublin?—Yes, certainly, but the guinea pigs were some of the most intelligent jurors, and understood their business better than anyone else. I think there were no better men than some of the guinea pigs; they had nothing else to do, and they attended to their duty and gave great satisfaction.

Mr. *Bruen.*

540. You have been acquainted with the state of the jury lists in the county and city of Dublin before and since the change in the law which was made in the year 1871?—Yes, I have been since the year 1860 sheriff of Dublin.

541. I speak of the jury lists now?—Yes.

542-3. Was the jury list before the change in the law more correct, with regard to the persons returned and their descriptions, than it is at present?—If you refer to the lists themselves, that is to say, the jurors' book, there is very little difference, so far as I know; I should say that they were better before the change introduced by the Act of 1871 than they are now.

544. I understood you to say that, knowing the state of things before and since the change in the law, you consider the lists before the law was altered were rather better and more correct than they are since the change in the law; I speak now of the jurors' book; is that your answer?—I cannot recollect exactly without looking over the books and seeing the names. I have not compared them and looked into some of the old jurors' books and some of the present ones; therefore, I would not like to give my opinion upon that subject; I have paid no attention to it.

545. Since the change in the law, however, you find that the jurors' books are very incorrect?—I do.

546. You are aware that there is a revision of those books by the chairman of the county, are you not?—I am.

547. Is that effectual in removing from the books the names of those who should not be on it?—It is not; I may say that there is a great number of names put on the book, and until they are summoned the new names do not know they are on at all; and then when they are summoned they are quite incapable, and not fit for serving; some of the men who were on the books have been excused three or four years ago; that is not the fault of the Act, but it is a great fault of the way in which the books are made out.

548. With regard to the serving of summonses by post, Dublin is different from the country parts, with regard to the facilities for delivering letters, is it not?—Certainly.

549. Then your evidence, with regard to summonses by post, must be taken to refer only to Dublin city?—Yes, certainly; I only give evidence with regard to Dublin.

550. If there was not a perfect delivery of letters through the post, should you consider that the service through the post in that way was a good mode of service?—No; in some places they might not get their letters more than once in two or three days, or even once a week.

Mr. *Bruen*—continued.

Mr. *W. Ormsby.*

11 May 1874.

551. Now with regard to the case of special jurors; you say that special jurors are obliged to serve both on the special jury and the grand jury, and that they get no credit for their services on the grand jury?—Just so.

552. Is it your opinion that they ought to get credit for that service?—I think they ought.

553. On the whole is it your opinion that the late change in the law, the amending Act of Parliament, has been effectual in removing the defects which existed in the principal Act?—It has not; I may state this, that taking the jurors' book, which the sheriff gets, it is almost impossible to carry out the law in marking the number of attendances, and all that; there is only a margin left by the person who returns, of about an inch or an inch and a half.

Chairman.

554. That is a matter of binding, I suppose?—No, you do not get it bound at all; I have to get fly-leaves attached to it, which makes the book very hard to manage.

Mr. *Bruen.*

555. Have you remarked that the duty of the Crown solicitor in setting aside jurors in Crown cases has been more largely exercised in Dublin since Lord O'Hagan's Act came into force than it was before?—I have.

556. Has that power been very largely exercised?—Yes, it has; and I have heard it complained of as being very disagreeable to have to do it, but it could not be avoided in my opinion.

Mr. *Verner.*

557. I think you have stated that there are the names of a number of dead men and men over 80 years of age on the jury list?—Yes, men of 70 and 80 years of age, and some over 80.

558. Is not the sheriff unable to collect the fines owing to the lists being thus badly made out?—Yes, it is so; lots of men are fined by the judge when there are in fact no such people, and some of them are out of the county altogether. I have known a case where there was a fine of 100 *l.* imposed, but the person who was fined was residing out of the county, and had not been for three or four years in the county at all.

559. Do you think it advisable to leave a discretion to the sheriff to meet this difficulty by making a selection?—Yes, either the sheriff or some other person certainly; I really do not think that there is any use in trial by jury in Dublin under the present state of the law.

560. If the sheriff did not select, who would do it?—I do not think that there is anybody who knows all about the people except the sheriff; I think the sheriff should have the power, and I think he should be heavily fined if it was proved that he did not act fairly in his selection. I think the sheriff should be made a Government officer.

Mr. *Downing.*

561. With a good salary?—Certainly.

Viscount *Crichton.*

562. That is the sub-sheriff?—Yes; the high sheriff does not know much about it.

Mr. *Verner.*

563. I may take it that you would prefer a selection

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Mr. *Verner*—continued.

selection by the sheriff, though personally you would rather not have to do it?—Yes.

564. You think it is the best method of carrying out the system?—I am quite sure that there is no other mode of obtaining good jurors.

The *O'Donoghue.*

565. You have stated that, in your opinion, if the present system was not changed it would be better to give up trial by jury altogether?—Yes.

566. Is that opinion the result of misconduct on the part of jurors that has come under your notice?—No, it is their ignorance, not misconduct.

567. What has that ignorance resulted in?—The result is, that they do whatever the judge (the Recorder of Dublin) desires them to do, in a great many instances.

568 Have failures of justice come under your notice?—No; I have stated that I do not attend to the verdicts, but I know how the cases go; for instance, the Recorder, is frequently obliged to tell the jury what to do.

569. What is your opinion founded upon?—On what I see and hear.

570. What is that?—They do not know what the verdict is that they are giving.

571. But still they give right verdicts notwithstanding, do they not?—I dare say they are mostly right.

572. Then what is there to object to?—I say that it is not their verdict; it is the verdict of the judge, whoever he is, or the verdict of one or two people.

573. You mean that either the judge or the recorder finds the verdict?—Yes; or one or two of the jury will tell the others what to find.

574. Does that take place in open court?—Yes, of course it does.

575. They do not retire to consider their verdict, do they?—Very seldom; the Recorder tells them, "Gentlemen, here is the evidence; and I should suggest you should find so and so."

576. Did I understand you to say that on the Fenian trials you selected juries consisting of six Roman Catholics and six Protestants?—I only said that the juries that tried some of the cases in which there were six Protestants and six Roman Catholics all agreed.

577. How did they come to be so equally divided?—By chance; it was not by placing them there.

Mr. *Plunket.*

578. You say that that jury which was composed of six Protestants and six Roman Catholics was so only by chance?—Yes.

579. Then you having formed the panel, how was that jury obtained; by what machinery?—The men that answered to their names, the prisoner had the power of challenging, and the Crown Solicitor had the power to set aside a certain number, but there were 12 jurors to whom neither the prisoner nor the Crown objected; they were selected by the Crown and by the prisoner.

580. I understand you to say with regard to the raising of the qualification, that it has left out a great many good jurors, while it has retained many who are not good jurors, graziers, and so on?—Yes, certainly.

581. Now is it your opinion that if a power of

Mr. *Plunket*—continued.

selection were reposed in some proper person, a lower qualification might be safely adopted?—It is my opinion that if the qualification were twice as high as it is, it would not obviate the difficulty which you have put; a lower qualification might be used, and yet you might have more respectable men.

582. That is to say, if a power of selection was vested in the proper person?—Certainly.

583. In that way you would get rid of those bad jurors?—Yes.

584. And you would restore some good men who have been left out by the new qualification?—No doubt.

585. Since the passing of Lord O'Hagan's Act, have there been any trials of a political or religious character within your experience in Dublin?—There was the prosecution in the Galway case, but that was under the old system. I think there has been none since the new system.

586. Is it your opinion that if such trials were to arise under the new system, the kind of juries returned under the new system would be proper juries for trying such cases?—Certainly not.

587. Is it your opinion that the power of setting aside jurors would have to be exercised to a greater extent than under the old system in those cases?—Yes, it is my opinion that it would.

588. You said that you did not wish to have that power restored to you; is that merely on personal grounds?—That is merely on personal grounds, because it is not a pleasant office. I feel more free as I am now, because I can say to every one, "I do not care a straw whether you are pleased or not, or whether the panel is a good one or a bad one." It is merely that.

589. But on public grounds you think that there should be a power of selection in some one, and you know of no better person than the sub-sheriff?—I think so; I have no doubt he is the best person.

Mr. *Mulholland.*

590. You were sub-sheriff of Sligo for some time, were you not?—Yes, for 10 years.

591. And you therefore had some experience of the class of men from whom the jurors were taken there?—Yes.

592. Is it your opinion that the jurors for the county of Dublin are less intelligent than those for the county of Sligo?—Oh, no; you can get as intelligent jurors in Dublin as at any place in the world.

593. One may presume, from your experience of Sligo, that some of those faults of ignorance and incompetency would attach to other counties?—I know that there are a very bad class of jurors in Sligo.

594. In your examination last year, you said, did you not, that the jurors of the county of Dublin were the reverse of ignorant, comparatively speaking?—Yes, I said so.

595. It is your opinion, is it not, that it would be impossible to get intelligent juries, except by some method of selection?—I would not say it is impossible, but I say that you never will have them.

596. Not by merely raising the qualification?—Just so.

597. Did I understand you to say, that not more than one-tenth of the number summoned are absent?—I say that there is more than one-tenth

Mr. *Mulholland*—continued.

tenth of those that are summoned that should not be on the list at all.

598. Last year you said, did you not, that more than one-half of those summoned did not attend?—There is certainly one-tenth who should not be on the jurors' book at all.

599. You were explaining how it was that the jurors had to be summoned so often, and I understood you to say that there was a certain proportion who did not attend, was that not so?—I said there was one-tenth that should not be on the jurors' book at all, under any circumstances; men that were dead, and so on; then there are very often not enough jurymen, and sometimes they have to try a case by 11 jurymen, with the consent of both parties; we have scarcely ever any more than two juries attend, that is 24 out of 48.

Sir *Colman O'Loghlen.*

600. In the evidence you have been giving, you have been speaking with regard to Dublin, and not to Sligo, have you not?—Just so.

601. You have stated that at least a tenth of the jurymen that are on the jurors' book ought not to be on it at all?—Yes.

602. Has there been any alteration made in the formation of the jurors' book in Dublin by the recent legislation; who makes out the jurors' list in Dublin?—It is made out by the clerk.

603. But who settles it; who revises it?—I do not think that it is revised at all.

604. Is it not the fact that there are counsel in Dublin who act as revising barristers, and also revise the jurors' book?—They revise the voting book.

605. But do not they revise the jurors' book also?—Only those that come before them.

606. Who revises the jurors' book in Dublin before it comes to you; it is made up by the clerk of the peace and other persons, but who revises it?—I cannot say positively.

607. How long have you been there?—Sixteen years; but I do not like to say anything I do not know exactly.

Marquis of *Hartington.*

608. Whom do you take it from?—The clerk of the peace; the honourable Member is right with regard to those barristers, but I do not know whether they revise it, except in striking off certain names.

Sir *Colman O'Loghlen.*

609. When you were acting as sub-sheriff to the county of Sligo, who made out the jurors' book there; was it not the fact that the jurors' book was revised at the special sessions by the magistrates?—Yes.

610. Is it not a better system that the revision should be made by the chairman of the county?—I think not; he does not know the county as well as the magistrates; the chairman only goes there four times a year.

611. Supposing the revision of the jurors' book was made a more serious thing, and was given to the chairman and the magistrates of the county, would not that be an advantage; I speak of the jurors' book simply?—It might be an advantage to a certain extent, but unless the people who get it up keep it correctly, I do not think there would be much advantage in it.

612. Who would you propose should be the

Sir *Colman O'Loghlen*—continued.

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person to revise the jurors' book?—I do not think that there could be anybody better than the magistrates and chairman.

613. You were speaking about the fines inflicted in the Courts of Dublin, and you said that all the fines you had to collect last year were about 28 *l.*—Yes.

614. And in the case of that trial which you alluded to, one fine was 100 *l*, was it not?—Yes.

615. But none of these fines were enforced?—None.

616. You have stated that in Dublin the service of the summonses is by post?—Yes.

617. And you find it to work extremely well, so far as you know?—Yes.

618. Formerly there were allegations that the bailiffs were bribed; but that is all done away with by the system of posting the summonses; is it not?—Yes; I know that they were bribed. In the Fenian trials, they threw all the summonses over the bridge into the river.

619. You think that the present system of serving summonses is much better than the old system?—Yes, I do; I think that the summoning of jurors by post is far better than the old system.

Mr. *Plunket.*

620. You mean the mere method of serving, do you not?—Yes.

Sir *Colman O'Loghlen.*

621. Do you say that the persons on the special juries in Ireland are now persons of inferior position and not wealthy?—No; they have plenty of wealth but they are very ignorant.

622. You think that the old system of guinea-pigs was better than the present system?—There were no better jurors than some of the guinea-pigs; you could not have more respectable or better men on the juries; you had men of high respectability; some of them had nothing to do, and they took a pleasure in serving on juries.

623. Did you ever hear it stated that those persons used sometimes to be canvassed to act on particular juries, and that they used to be talked to beforehand?—No; I never knew anything of the kind; I have heard that said, but I never knew it of my own knowledge.

624. Did you ever hear it said that jury panels were made out in the sub-sheriff's office, and that persons were put on for particular reasons?—It was never done with me or to my knowledge.

625. But did you ever hear it alleged that it was done in former times?—I have heard a great many things, but I never believed them.

626. I understood you to say that you thought there should be some person to have the selection of the jury panel?—Yes.

627. And that that person should be, in your opinion, the sheriff?—That is the only person I can think of.

628. Do you mean the high sheriff or the sub-sheriff?—I suppose the sub-sheriff, as he does everything.

629. The sub-sheriff does it, does he?—Yes.

630. In your experience I suppose, you have always done it yourself, and never delegated it to a clerk?—I always did it myself, and never delegated it to a clerk.

631. But with regard to leaving it to the sheriff, you mean to the sub-sheriff to select the jury panel?—Yes.

632. You

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Sir *Colman O'Loghlen*—continued.

632. You say that at present the system of ordering jurors to stand by is more exercised than it used to be?—Yes.

633. Do you think it is better to have the selection of the panel made by the sub-sheriff in his own room than by the Crown solicitor in open court acting under public opinion?—I think it is better for the sub sheriff to make out the panel in his private room; it is a very disagreeable thing for the Crown solicitor to object; he has the privilege to make as many jurors stand by as he pleases; and I have heard him say that it is very disagreeable to him to have to ask them to stand by.

634. Did I understand you to say that the Act of last Session had made no improvement in the panels?—Just so; I say it is worse than it was before.

635. Is there not power under the Act for the judge to excuse jurors on account of their being over age or otherwise unfit to serve?—Yes; the judge always had that power, I think, whenever a person was over age or incapable of serving as a juryman.

Mr. *Law.*

636. You stated that the special jurors' list for the county of Dublin was 641, did you not?—Yes.

637. On what list were the persons over age, and barristers?—On all the lists; on the general list, and some on the special list.

638. That, of course, was the fault of the collectors?—Yes.

639. Now, do you think if the collectors were impressed with a sense of their duty by the imposition of a fine of 50*l.* when they go wrong, as the Act authorises, that would quicken their faculties?—It ought to do.

640. According to what you say, they do not appear to have done their duty at all?—I think some of them do not do their duty.

641. Of course you do not attend the revision?—I have been at the revision, that is to say, I have brought my book to the sessions when two or three applied to get their names off. I had to bring the book back for the chairman to take the names off and initial it.

642. You do not attend the revision for the city of Dublin, I suppose?—No, it would be impossible for me to do so.

643, You spoke of exempting managers of railways from attending on juries?—Yes.

644. Would you extend that to managers of large concerns on their own accounts; would you exempt all merchants?—I think it should be optional.

645. Optional with whom?—With the sheriff, if he thought that the men had business of great importance.

646. But, considering the time prescribed for forming the panel, it would be very inconvenient if a man was allowed to say that on a particular day he would decline to attend?—But suppose he came a week before the panel was formed.

647. Would not the result be that every respectable person would have business that would keep him away?—I would not do it to that extent.

648. Then why, if you would not exempt people who are managing a business for themselves, would you exempt people who manage

Mr. *Law*—continued.

the business of others?—I would exempt a railway manager.

649. That is the manager of a railway according to your view?—Take Mr. Ward, the manager of the Midland Railway, and Mr. Skipworth, and those people.

650. Would you propose to extend that exemption from railway managers to bankers?—Yes; a man might be ruined through the manager not being there; he might want a bill discounted.

651. Surely the management of no bank is ever left entirely to one man; would you exempt a private banker who was managing his own bank?—No.

652. Why not, since he might be ruined also?—I do not look on private banks the same as public banks.

653. Would not the power of a judge to exempt a man for special cause be quite enough for individual cases when they arise?—I do not think that the judge would exempt them for such a cause; and I do not think that the judge has power to do so at present.

654. I thought you said that a judge might exempt anybody, and excuse him from attention?—I believe that a judge will always excuse a person from attending who is deaf or over 80.

655. But have you ever seen a judge excuse a man from attending, because it would be very inconvenient for him to do so?—Yes.

656. Does not that constantly happen?—Yes.

657. In fact, is the juror not always exempted from attending when he makes out a reasonable case in the opinion of the judge?—But what the judge thinks fair the man might not think right.

658. You would rather leave it to the man's own wishes in conference with the sheriff?—No, I do not wish that at all; at present there are nominally 48 jurymen summoned for the Court of Queen's Bench to try cases, and virtually there are not more than 24 who attend.

659. Suppose the list were properly revised by leaving out the dead people and people over age, which is a very simple process, and supposing 48 are summoned, would you think it a good thing that the 48 who are bound to attend should be required when the court met to be in attendance, and if they did not give a proper excuse that they should be fined on the spot; would that ensure a reasonable attendance, do you think?—It would ensure a better attendance, but I think there are some of them who would rather pay a heavy fine than attend.

660. What class of people are they?—Business men.

661. Are they men of intelligence?—Yes.

662. First class jurors?—Not first class, but as good as can be obtained.

663. Would it not be desirable to enforce their attendance if we want good jurors?—No; I think you can get men who are just as good jurors who have not that business to attend to; men who have spare time.

664. In that case you must confine the service to a small number of people, must you not?—No; not a small number.

665. Would it not be something like the old system where a few trained men, comparatively, did all the work?—I still say that the trained men were the best men.

666. A great many of the new men do not know anything about it?—Yes.

667. But when they have been trained for a little

Mr. *Law*—continued.

little time, they will know how to sign the panel like other people, will they not?—Yes.

668. And if the service is to be distributed widely, some men must be new at one time or other, must they not?—Yes.

669. But a man will not be new after he has served a little time, and he will cease to be awkward at the work?—Yes; no doubt.

670. Would you put on the special jury fund-holders, holders of shares in public companies, and people who could be got at by returns in that way?—I see no objection to it, but I think that it would be hard to find them out.

671. Suppose you could get them, would you enlarge the panel in that way?—Yes; I should say they would effectually enlarge the panel.

672. Can you give the Committee the number of jurors who were told by the Crown Solicitor to stand aside at any of the sessions in Dublin?—No; but I could find that out.

673. You are positive, however, that the number was increased?—Yes; just from listening and watching the cases.

674. Did you ever watch before the change.—Yes; you know where I sit in the court, and I see every case in the commission.

675. Has the power of directing jurors to stand aside been exercised more freely since the Amending Act was passed?—I say that they have directed a great many more men to stand aside since 1873.

676. I speak of the Amending Act?—Yes; I speak of the last commission within the last two months.

Marquis of *Hartington.*

677. Have you stated already what reduction in the number of jurors has been made by the Act of last Session?—No; I have not stated that because I have not got the figures with me; I have only the number of jurors that were on the book for 1873 and 1874. In the county of Dublin for special juries in 1873, there were 1,104, and in 1874 there are only 641.

678. Being a reduction of nearly one-half?—It is a reduction of more than one-third.

679. And with regard to common jurors, can you state the numbers?—Yes; on the entire general book of common jurors there were 3,020 in the county of Dublin; that is in the year 1873; that is both common and special.

680. But what is the total number in the general book?—In the general book for 1873 there were 3,900, and in 1874 there are 3,682, that being 200 difference.

681. Therefore, practically, the Act of last Session, in Dublin has hardly had any effect?—Very little; it makes a difference of 200.

682. Therefore, so far as Dublin is concerned, there is no reason for concluding that any defects in the principal Act were not amended by the Amending Act of last session, for the Act has practically in Dublin been inoperative, has it not?—Yes.

683 That is because the rating is comparatively high in Dublin, is it not?—I dare say.

684. Did the Act of last year raise the qualification from 20 *l.* to 30 *l.* in Dublin?—Yes.

685. But the effect of that has been only to strike off 200 from the list?—Yes.

686. Can you tell the Committee what annual value a 30 *l.* rating represents in Dublin?—I cannot.

Marquis of *Hartington*—continued.

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687. But it is well known, is it not, that the rating is below the actual value?—Yes, I should say so.

688. Considerably below, is it not?—Yes; one-fourth below.

689. I do not know whether I quite gathered from you on what you have formed your opinion with regard to the inferiority of the present juries. I think you said that you did not pay any attention to the verdicts?—I was asked if I could state any cases where they found wrong verdicts, and I stated in reply that I could not name any. I think there are not many cases that are complained of, but it was not the verdict of the 12 men who were supposed to find it; it was often one or two of the jurymen who told the others what they should find.

690. How do you know that?—Because I have heard it from the jurors themselves.

691. Do you mean as a matter of conversation subsequently?—Yes; I have heard the judge or the recorder say, "Gentlemen you have heard the evidence, and you must find so and so," and they do it. I have seen them in cases where they did not know where to sign the issue paper; and I have seen them when you could scarcely read the writing of the verdict spelt wrong.

692. Have you seen that lately?—Yes.

693. Have you seen that at the last session?—Yes, at the last session, or the session before.

694. Might not that arise as much from inexperience as from ignorance?—I knew it was from ignorance, because I knew the men.

695. In fact, your opinion as to the quality of these jurors is more derived from the look of the men than anything else?—No; if you speak to a man you know whether he is intelligent or fit to be on a jury or not.

696. Notwithstanding what you said in answer to Sir Colman O'Loghlen, I suppose the sheriff is ultimately responsible for whatever is done by the under sheriff, is not he?—The under sheriff gives the sheriff a large amount of security, and the high sheriff is perfectly free from all the acts of the under sheriff, except as he may be called up by the Government to account for the list; but if there is a wrong arrest, or if there is anything that the judges take cognizance of, it is the sub-sheriff that is to be responsible for it, and has to pay for it.

697. When the panels were selected by the high sheriff, the high sheriff would have been responsible for any partiality, would he not, though practically it would have been done by the sub-sheriff?—I suppose that would be so.

698. In fact, he was virtually responsible, was he not?—He is virtually responsible now to the Crown; but if there is any mistake committed the sub-sheriff must pay the high sheriff.

699. But in the particular part of the duty which used to devolve on the sheriff, namely, the selection of the panel, though the work was done by the sub-sheriff, the high sheriff was responsible by virtue of his having appointed the sub-sheriff, was he not?—Yes; but I never knew a high sheriff to select a panel, except a grand jury panel.

700. Was not that because he had confidence in the sub-sheriff?—Yes.

701. But in leaving the selection to the sub-sheriff he was himself responsible; was not that so?—I suppose so. There was one high sheriff who said to me that he had offered the post to a

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Marquis of *Hartington—continued.*

Roman Catholic, and he could not get him to take it, and he then offered it to me, but he said he must have the selection of the panel himself; he had to give it to me because he could not do it himself.

702. By whom is the high sheriff appointed; is it by the Crown?—Yes, the high sheriff is appointed by the Crown. The judges return a certain number of names, and the Crown makes a selection.

703. Who returns the names to the judges for the appointment of high sheriff?—The outgoing high sheriff.

704. But the appointment is made by the Crown?—The appointment is made by the Crown.

705. Does your preference for the system of selection by the high sheriff depend in any degree on the circumstance that the high sheriff is nominated by the Crown?—No.

706. You do not much care how he is appointed, I suppose?—Not a bit.

707. You would be equally in favour of a system of selection by the high sheriff if the Bill now before the House was passed, and the high sheriff were appointed by the corporation, would you?—I do not think that I will ever serve again as sub-sheriff unless they pay a great deal better; I will not have the responsibility and trouble of it; I am getting rather tired of it.

708. But would you be equally in favour of a system of selection by the high sheriff if he were not nominated by the Crown, but by the Corporation of the city of Dublin, would you?—I would just as soon have the one as the other.

709. Your preference for that system does not depend on the circumstance of the sheriff being nominated by the Crown?—I have not given that matter any thought; I think the Crown always selects a very proper person; he is generally a man of property.

710. Do you feel equally sure that the corporation would select a very proper person for the post?—I do not see why they should not.

711. But you have not settled that part of the question in your own mind?—No.

Mr. *Downing.*

712. You have said that the outgoing sheriff returned the name of the sheriff to the judges?—Yes.

713. But the judges are not bound to take that return from the sheriff, are they?—I do not know that they are bound, or not, but I never knew an instance where the judges rejected it.

714. Do you not know that they do it frequently?—No; it is true that they have done it, but I never knew an instance, except one or two, where it was changed, and I have been 24 years in the service.

Chairman.

715. Has your attention been called to the Juries Bill for England which is now before the House of Commons?—No.

716. You heard the other day, did you not, the examination of some of the witnesses before the Committee with regard to some of the clauses in that Bill?—Yes.

717. There is a clause which provides for the revision of the jury list by the justices; has your attention been called to that at all?—Yes, I have heard of it.

Chairman—continued.

718. How do you think that that 19th clause in that Bill would work in Ireland?—I think it would be a very good clause; I think that was part of the law before, was it not?

719. That Clause 19, you see, refers to the overseers in England?—Yes.

720. Who would answer to overseers in Ireland?—The rate collectors.

721. Do you think that if the word rate collector were substituted for overseer the action of the rate collector and the justices, as proposed in that clause, would be satisfactory?—Yes, I think so.

722. You notice that it gives considerable power to the justices?—Yes.

Mr. *Downing.*

723. Would you say, looking at that clause, that the magistrates should, of their own knowledge, have power to strike off names on the jury panel?—Yes, certainly, if they thought the sheriff was not a fit person to do it.

724. Without the examination on oath of any witness?—It gives them that power.

725. That is to say of his own knowledge?—Yes, of his own knowledge; that is just as good as the examination of a dozen witnesses on oath.

726. Better than his acting as a judge, and deciding the case on evidence?—I would have the clause as it is.

Mr. *Plunket.*

727. When you said that a greater number of jurors were ordered to stand aside in criminal cases since the Amending Act of last year, did you mean a greater number in the cases since the Amending Act than in the cases before the passing of Lord O'Hagan's Act?—Since the Amending Act, and before Lord O'Hagan's Act.

Mr. *Law.*

728. Do you think there were more directed to stand aside since the Amending Act than while the principal Act was in operation?—No; about the same.

Mr. *Bruen.*

729. Just one question more: you are aware that the intention of Lord O'Hagan's Act was to distribute the burden of service fairly and impartially among the whole body of jurors?—Yes.

730. I want to ask you this; is the burden of service fairly and equally distributed by an Act which makes the service on a jury four or five days for a man like a bank director or a railway manager whose time may be worth 1,000 *l.* a day, equal to the service of another man who is called upon to serve, suffers no loss because his time is of no pecuniary value?—Certainly not.

731. Is not that the natural result of the present system of selecting by rotation?—Certainly.

732. In your opinion, is it possible in any way to distribute the burden of service fairly and equally without having some power of selection in the person who forms the jury panel?—It is not.

Sir *Arthur Guinness.*

733. Is it optional with a judge who has once inflicted a fine to follow it up and exact it or not, as he pleases?—No, it is not; the person can

Sir *Arthur Guinness*—continued.

can appeal; you have 31 days within which you can appeal.

734. That appeal must be heard, I suppose?—Yes; I have known some cases where they paid without going to appeal.

735. But if an appeal is made, it must come to trial, must it not?—Certainly.

736. It is optional with the judge to drop it?—Just so; you put in an affidavit which states your reasons for not attending, and lodge it with the clerk of the peace. There are six commissions in Dublin, and if you are fined in the May Commission or the April Commission, then in the June Commission, whoever sits as judge, hears that appeal; it is not that judge who fines you, but it is the next judge.

Marquis of *Hartington*.

737. Where did you take these numbers from which you have given us from the jurors' book?—I took them from the jurors' book; I took them out myself.

738. Are they added up in the jurors' book?—Yes.

739. You have no doubt about the correctness of the figures, I suppose?—No, certainly not; they are added up correctly, I have no doubt; I took those out on Tuesday, when I got the summons to attend here.

Marquis of *Hartington*—continued.

740. The Act of last Session did not apply to the county and city of Dublin, did it, I mean the amending Act of last Session?—Only to the city, I believe; I really did not know what questions I should be asked until I sat in this chair; I took the figures out myself in a hurry, but I am sure they are correct.

Mr. *Verner*.

741. You prefer the service of summonses by post?—I do.

742. How do you obtain the proof of the receipt of a summons?—I have a duplicate; the Post Office stamp is the proof, and it is the best proof that you can have.

Mr. *Mulholland*.

743. In the list which you give in your table for 1874, the special jurors appear to be reduced by 500?—Yes.

744. The 500 so reduced from the special jurors are of course added to the general jurors, they have been sent down to the general jurors list, I suppose?—I dare say.

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Mr. Joseph Bullen Johnson, called in; and Examined.

Mr. *Mulholland*.

745. You were examined before the Committee of last year, were you not?—I was.

746. And you then stated that you had been sub-sheriff of the county of Cork for 15 years?—Yes.

747. I believe that you had had a good deal of experience before that?—Yes.

748. How many quarter sessions are there held in the county of Cork annually?—There are 24 annually, 12 in the east riding, and 12 in the west riding.

749. How many jurors do you summon for the grand jury at the quarter sessions?—Thirty-six for each quarter sessions, that is to say, on the grand jury.

750. How many do you summon for the petty jury?—Sixty-four, that includes those summoned for Crown purposes and for civil purposes.

751. I suppose those that serve on the grand jury are not exempt from serving at the assizes?—No; under the amending Act of last Session they are liable to serve on both.

752. Can you tell the Committee the number of special jurymen on the jurors' book for the county of Cork?—The number on the book now is 508, before the amended Act it was 816.

753. So that there has been a considerable reduction by the recent Act?—Yes.

754. Do you consider that that is a sufficient number of special jurors for the county of Cork?—No; I think that the number of special jurors may be very considerably increased; I think it ought to be, and I think it can be, considerably increased; it is more for sessional purposes that we require the special jury list to be increased.

755. Previously to the passing of the amending Act the number of jurors on the book was 8,425, was it not?—Yes; previous to the amended Act the number of jurors on the book was 8,425.

756. By the amended Act 2,771 were struck off, were they not?—You may be right, but my numbers are 2,765.

Mr. *Mulholland*—continued.

757. I take it that this return is correct; you took it from your own book, I suppose?—Yes, I took it from my own book, and I believe it is correct.

758. Have you looked into the returns to see if the qualification was raised to 40 *l.* how many would be struck off the list?—Yes, I see if you raise the qualification to 40 *l.* in the county of Cork, it will only leave 3,100 jurymen on the jurors' book. In the year 1870 it was 4,081; in the year 1871 it was 3,985; and in the year 1872 it was 4,226. That was before the passing of Lord O'Hagan's Act.

759. How many jurors do you require for grand jury purposes and petty jury purposes for the county of Cork in one year?—For sessions purposes I require 2,400.

760. That is to say, for quarter sessions purposes alone?—Yes, for quarter sessions purposes alone I require 2,400; this includes sessions grand jurors.

761. How many do you require at the assizes?—I would say 500; 200 for each panel, and 48 for each special jury panel; say 500 in round numbers.

762. That would exhaust the whole of the jurors' book in one year, would it not?—Yes, unquestionably you would exhaust the whole of the jurors' book in one year. if the qualification be raised to 50 *l.* and upwards; unless you adopted a different theory. My idea is that there should be a separate qualification for assize jurors totally distinct from sessions jurors.

763. You said so, I believe, in your former examination?—Yes.

764. And you also said that it was a great hardship to summon people from one district of a division into another district?—Yes, I think that

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Mr. *Mulholland*—continued.

that is a very great hardship, that is for sessions purposes; under the present Bill I think it is a great hardship that men should be brought from one sessions district, if I may so say, to another sessions district; they are called divisions, for there are two sessions towns in the same division. It is a very great hardship that those men are brought from one sessions district to another, for it entails very long journeys; take the division of Middleton, for instance, there is the sessions town of Fermoy, and there is the sessions town of Middleton, they form the sessions division of Middleton; the county extends nearly 30 miles north of Fermoy. I am now obliged to summon jurors from that district to attend at Middleton, and they must pass through the sessions town of Fermoy; and have to go 20 miles further in order to reach Middleton; I would suggest that the sheriff should be empowered to summon jurors for sessions purposes merely from the district in which they reside instead of from the division as at present; that is my suggestion, and it would only occur in two instances in the East Riding, and in two instances in the West Riding of the county of Cork.

765. Now, with regard to the matter as it stands, you may have to send a man, say to Skibbereen, from a place which is 50 miles off?—Yes; and he might be summoned from Castletown and have to pass through the sessions town of Bantry to reach Skibbereen.

766. Do you see any difficulty at all in having a jurors' book for each district?—I suggested on the former occasion on which I was examined before the Committee of last year, that there should be a separate jurors' book for sessions and assize purposes, and that was one of my reasons; in order, if possible, to have the jurors in each division set out in the jurors' book of that division; the sheriff could not travel outside that, and he would follow the alphabetical order.

767. Do you think it would be an advantage to omit the words "according to the dictionary order"?—No, I see no advantage in that, unless you confer on the sheriff a discretionary power within the letter.

768. Does that throw any difficulty in the way of the sheriff?—It may be a little difficulty; but I do not see the necessity for leaving those words out of the Act for that reason.

769. In your former examination you stated that you were entirely opposed to going back to the old system of giving the sheriff a power of selection?—Yes; I stated that I was opposed to that, and I am still opposed to it.

770. Have you seen no reason to alter your opinion?—None; I would much rather that that power was not conferred on the sheriff again. I think at that time I stated that the result of giving the power to the sheriff might be found beneficial, but that individually I very strongly objected to its being conferred upon him.

771. At Question 3574 you were asked, "Will you explain to the Committee why you think so?" and you replied, "Because I think that, if the sheriff wishes to act improperly, it is quite within his power to do so"?—Yes, I think so.

772. "And if you again conferred upon him the partial power of selection, it would be, in point of fact, quite within his power to pack a jury, if he wished to do so"?—Yes; I adhere to that opinion.

773. "Therefore I think it is but fair that

Mr. *Mulholland*—continued.

that power should be removed from the sheriff, so as to place him above suspicion"?—Yes.

774. You reiterate that opinion, do you?—Yes, I am still of that opinion.

775. You know pretty well the system at the quarter sessions, and the action of the chairman and the magistrates?—Yes.

776. Do you not think that the chairman and the magistrates, with the assistance of the clerk of the peace, who is well acquainted with the county, with the assistance of the rate collector, the clerk of the union, and other officials who are bound to attend at present, you could thoroughly revise the list, so as to expunge from it all persons not fit to serve as jurors?—They are quite capable of doing so; the only difficulty would be want of local knowledge; I think that their action should go further than merely following the rating qualification; I think the collector of poor's rates should be bound to return the names of all other persons who were fit and proper persons to serve as jurors, though they were not rated within his district; I would describe them simply as qualified residents.

777. Why do you contemplate that?—There are two classes; first of all, the class of persons who pay no rates, the landlords paying the rates, but they are a very small proportion; next there are a great many most intelligent farmers whose farms are rated in their mothers' names, or in their sisters' names. They are really practically the owners of the farm, and do all that is necessary with regard to the buying and the selling of the stock; they are men of sufficient intelligence to serve as jurors, but they are now exempt, and I very much fear that they will be further augmented by jurors getting their farms rated in their mothers' names, who at present have those farms in their own names; I know one or two instances where that has been done, though the son is the person who actually pays the rate.

778. Do you not know that the tendency is entirely the other way; namely, that young men wish very much to be rated in the place of their mothers, for the purpose of obtaining a vote?—That may be so in boroughs, but in counties they do not set that value on a vote, and would prefer avoiding service as jurors to availing of it.

779. When you say that the magistrates have not the local knowledge, do you mean to say that the magistrates sitting at Bantry, with the assistance of the chairman, cannot do what is necessary?—My idea is this; the formation of the jurors' list is at present by the clerk of the union, who obtains the information from the collector, and that may be perfectly correct, but I think the first revision of the jurors' list should take place at the petty sessions. The list should first be returned by the clerk of the union to the clerk of the peace; it should be then printed immediately by him, and copies should be sent to each petty sessions district, and a day fixed for the revision. Before those copies were sent out the day fixed for the revision at the petty sessions should be set out at the head of each list before it was posted; and then the public at large would have an opportunity of seeing that their names were returned on the list, and would also know the day of revision, and then they could personally attend before the magistrate to object if they pleased; would require the stipendiary magistrate to attend; the parties returned might attend, and explain their objections, and if they were incompetent

Mr. *Mulholland*—continued.

petent the magistrates would have an opportunity of ascertaining the fact. If there were any person omitted from the list returned hy the clerk of the unions, the constabulary, or anybody else, ought to have the right to suggest that the names should he added to the list; I think that you might have a further revision at the court of quarter sessions, which would be more in the shape of an appeal against the decision of the revising hy the magistrates at petty sessions, and anyhody who thought he had been improperly placed on the list would have an opportunity of coming hefore the revising harrister and getting his name struck off; and if a magistrate at the sessions should be overruled hy other magistrates, who thought that the juror's name ought to be added or struck off, he would have a right at the court of quarter sessions to bring it forward in the shape of an appeal; I think that a great mistake has been made in the revision of the jurors' lists.

780. But the plan you suggest is exactly according to the law as it used to he, is it not?—No; there is no revisiou before the magistrates at petty sessions now.

781. There is a special time appointed, and all the lists for the district are hrought hefore the magistrates at special sessions, are they not?—That was so under the old system, before tbe passing of Lord O'Hagan's Act.

782. But was not that so?—Yes, it was then.

783. But did not that fail altogether?—It was very much what it is now; the special sessions for revision were only held iu certain localities, much the same as if they were now quarter sessious districts; they were only held in six places in the county of Cork, whereas I would suggest that the first revision should take place at the petty sessions, which would he much more inexpensive, and the parties would have a better opportunity of attending hefore the magistrates, and the magistrates would have an opportunity of seeing whether the people were fit or not; now the revision takes place before the chairman of quarter sessions, and the ignorant electors know nothing of what has takeu place, and the revision is really done hy the poor's rate collector, and not by the magistrates; it is a mere matter of form at the court of quarter sessions; the chairmen would he most anxious to revise the lists well for their own sake, but they have not the local knowledge, and those people do not atteud hefore them, and they cannot tell whether the juror is ignorant or not; they also have no means of knowing whether tho poor rate collector has fairly performed his duty; that know ledge would he obtained if the first revision took place at petty sessions.

784. You are at all events of opinion that the revision can he carried out satisfactorily and fully hy the magistrates, whether in petty sessious or quarter sessions?—In petty sessions, but not at quarter sessions; they will not all attend at quarter sessions, and the jurors themselves will not attend; I think it is most desirable that they should have an opportunity of attending, and that is why I suggest that those lists originally furnished by the clerks of the union should be returned at once to the clerk of the peace, in order that he may have them printed and copies sent out to the petty sessions districts, and hy that means every juror in the county would have sufficient knowledge in the course of the year to know that his name would appear at the next revision on the jurors' list, and he could then come forward, if he thought proper, and object to his name being put on the jurors' list.

785. Of the 3,010 that you say would be the number on the jurors' book, I suppose a great number of them would be exempted?—That is the number rated over 40*l*. I think there would be a great many exempted, because my experience of jurors, under the amended scheme, shows me that the jurors' list ought to be further revised.

786. With regard to the operation of the Acts of Parliament since the ameuded Act was passed, are you, as sub-sheriff, satisfied with it?—I think it has many advantages. First of all, it has taken off a very large proportion of the ignorant and illiterate jurors, which has saved the judges at assizes much trouhle. It has also had another very great advantage, that is to say, in not requiring the sheriff to note in the jurors' hook the attendance of grand jurors at quarter sessions; that heing so, the list remains unaltered, and they are availahle for assize purposes; if the amended Act were not in operation, my special jurors' hook, under the old system, though it contained 816 names, would have heen exhausted on the 1st of January in this year, and I would have had no special jurors available for assize purposes, until the present general jurors' hook was exhausted.

787. Who were the judges at the last assizes in Cork?—Mr. Justice Barry and Mr. Justice Fitzgerald.

788. Did you hear them hoth congratulate the jurors on their conduct and their verdicts?—Yes, certainly; but there were certain jurors whom they were obliged to excuse, hecause they were incapable of paying the expenses of remaining in Cork, and they did not appear to me to he the right class of men to form the panel; after the first day or two, the class that remained were intelligent enough.

789. With regard to summoning jurors, that must he a heavy item of expense, must it not?—Yes, under the present Act it is enormous; it has increased five-fold.

790. Who pays the expense of summoning jurors?—The suh-sheriff.

791. Does he do that out of his own funds?—I had to do it myself on the last occasion, and the grand jury presented to me a sum adequate to the extra expense which was imposed upon me by the passing of the Act; that was at the last summer assizes.

792. Do you think that they have that power?—The judges intimated at the assizes that it was at the discretion of the grand jury, hut not compulsory on them to do so; they would not make it mandatory.

793. You know Mr. Fergusson, the chairman of the West Riding of the County of Cork, I suppose?—Yes.

794. He was examined on Thursday last, before this Committee, and he suggested that all summonses should he served hy the summons server of the petty ssssions district in each part of the county, and that the man should make an affidavit of the mode and time of service, and where he did not serve them, the cause of the non-service should he returned to the clerk of the peace, for quarter sessions purposes, and to the

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Mr. *Mulholland*—continued.

the clerk of the Crown for assize purpose, and that that record should he posted at the court of quarter sessions, and the assizes, as a proof of service; do you approve of that?—Yes, I think that would he a very desirable plan, and I see no objection to it. The present mode of service is difficult and costly to the sheriff.

795. That would be a mode of service which would be very inexpensive, would it not?—Yes, it would be very inexpensive to the sheriff.

796. And there would also he the supervision of the magistrates at petty sessions?—Yes, certainly.

797. And any default on his part either from want of consideration or otherwise could be detected?—Yes, and punished immediately hy the magistrates; I think that service by registered letter might very safely be carried out in counties to grand jurors for sessions purposes and to special jurors, hut I never would advise its being further extended; it would never he a certain mode of service for common jurors in counties; it cannot go heyond grand jurors and special jurors, but it would be satisfactory as to them.

798. Why do you draw that distinction?—Because the special jurors and grand jurors are a more intelligent class of men, and they are taken from the special jurors' hook.

Chairman.

799. This being a question of service of summons, how does your answer apply?—Because tbe more intelligent the man was the better he would be known in the locality, and the more certain he would be of receiving a letter tbrough the post.

Sir *Colman O'Loghlen.*

800. That is to say if the post town was inserted in the book?—That should be the rule of course; the post town should be inserted in a column in the special jurors' book.

Chairman.

801. If a man is properly described in tbe list bis letter will reacb him just as well, if he is an ignorant man, will it not?—No, not quite; in country districts, tbere being no delivery, every man must call at the post office for bis letters; in the first case the letter may remain there for 10 days without bis so calling, and the postmaster would then return it through the dead letter office; at least that is my impression. I know many instances where letters from the post office to that ignorant class of men bave been returned to me through the dead letter office.

802. Tbat is to say the class of men that would be qualified to serve as common jurors?—I allude to common jurors more than to other jurors; of course there are many men on the common jurors' book who are far more qualified than some on the special jnrors' hook, but as a general principle that could not be regarded as a certain mode of delivering the summons in every case.

Mr. *Downing.*

803. If that system of Mr. Fergusson's were adopted, there would he no occasiou to have a distinct mode of summoning special jurors?—No, I see no necessity for it excepting the saving of expense: that is the only object; it would be nothing wbatever to me. The system suggested

Mr. *Downing*—continued.

by Mr. Fergusson would be much easier than the present system to the sheriff.

804. The remuneration to the bailiff for serving a summons is fixed by the statute at 6 *d.* per summons?—Yes.

805. So that if a mau had 20 to serve he would get 10 *s.*?—Yes.

806. That would he very good remuneration, would it not?—Yes, in some cases. If for quarter sessions purposes you adopt the system of only summoning jurors from the locality, it would be very inexpensive, and it would remunerate the server very well; hut you know the vast exteut of the sessions districts, and it is often impossible for anything less than five men, to do the business of serving the summonses fairly. I am forced to have five men under the new system, whereas two did the business under the old system in each division.

807. Is there any salary to the office of subsheriff?—Yes, there is a fixed salary for each county; 111 *l.* a year is the salary in my county, and the expense of service would amount to three times that sum.

Mr. *Bruen.*

808. You have stated that there were a great number of jurors excused at the last assizes at Cork?—Yes.

809. Could you give the Committee any idea of the number so excused?—There were certainly one-fiftb of tbe number on the panel excused; about 40 out of a panel of 200.

810. Those were men who actually attended?—Yes, who actually attended and presented themselves, or were present themselves, to satisfy the judge that they were incapable of bearing the expense of remaining in the town during the assizes, and they were excused.

811. Was it only on the plea of expense tbat they were excused?—That was undoubtedly the ground put forward; hut what was passing in the judge's mind it would not be for me to say.

812. You saw tbose jurors yourself, I presume?—Yes.

813. Do you think that those were men wbo ought to bave heen excused?—I think those who were excused were very properly excused; I think they were not an intelligent class of men; in fact, I thiuk they were quite the reverse of intelligent men.

814. You think, in fact, that those were men who though tbey were hrought to the assizes as jurors, were not fit to serve?—Yes.

815. A very large proportion of the panel?—Yes.

Chairman.

816. How many should you say?—Forty out of a panel of 200.

817. But how many attended wbo were summoned?—I think the judge excused very nearly forty, and no man was excused who did not attend personally.

818. But you summoned 200 on the panel?—Yes, and there were 150 out of the 200 summoned who attended during the assizes from time to time; a great many of them, about 50 I should say, had sent in medical certificates; some of them habitually absent themselves on that ground; tbat at least was the case under the old system, and of course that would he the case under the new system. A man will run the risk of a fine sooner than attend at the assizes.

819. But

Chairman—continued.

819. But out of 150 who came, 40 were excused?—Yes, about 40 were excused; certainly over 30. I may have overstated it when I said 40, but I think not.

820. Do you suppose that that panel was at all a different panel from what are usually summoned?—It was a decided improvement on the panels of the two previous assizes, and to that extent the amended Act has had a very desirable effect.

821. The natural deduction to be drawn from what you have just stated is that out of the whole jurors' book, one-fifth, or nearly a fifth, are unintelligent and unfit to serve on juries, is it not?—Yes.

822. That is to say, under the amended Act?—My experience has only reference to one assizes under the amended Act. I do not know what the effect will be when I come further down the panel; so far as my experience goes out of the first 200, it is what I have stated.

823. At all events, the proportion was even larger than one-fifth under the old unamended Act?—Yes, it was much larger at the two former assizes.

824. You say you think that those who serve as grand jurors at quarter sessions should also be liable to serve as common jurors at the assizes?—Clearly so.

Marquis of *Hartington.*

825. The grand jurors are now liable to serve as common jurors, are they not?—Yes; they are now liable to serve, and that is one of the great advantages of the amended Act; in fact, if that were not so, the special jurors' list would have been exhausted on the 1st of January this year, and I should not have had a single special juror available for assize purposes now; under the present Act it will take three years to exhaust the list.

Mr. *Bruen.*

826. Is that your only reason?—No, I will go further than that; I think that a man who attends as a grand juror for two hours is not entitled to exemption for such service; a juror comes up for assize purposes from a distance perhaps of 70 miles, whereas the grand juror comes, as a rule, not more than 35 miles, and in many instances not a mile, and in two hours he is discharged.

827. You think that there is a distinction in the burden of service, which ought to be taken into consideration in summoning people to serve?—Yes; of course a grand juror is liable in that way to do more service possibly than a juror on the common panel, because he is liable to be summoned both ways, whereas a man who is not on the special jurors' book is only liable to serve at the sessions or assizes, for which he will receive credit.

828. Is it not the idea of the Act of Parliament that the distribution of the service should be as equal as possible?—Yes, no doubt; but the only injury, if we must call it so, is the fact of his having attended as grand juror at the sessions for two hours.

829. But he has had the expense of going there, perhaps, and perhaps a long distance?—Yes; but if you adopt that theory, you must assume that the jurors for the assizes must be taken from the ordinary jurors' book, and not from the special jurors' book at all.

Mr. *Bruen*—continued.

830. You think that juries formed from the common jurors' book should be leavened with a certain amount of special jurors?—Yes.

831. You think it right that it should be so, do you?—Yes, I think it decidedly right that the intelligent class should be mixed with the unintelligent for their better guidance in forming their opinions in civil actions, as well as for other purposes; of course but a small proportion of special jurors would be made available for assize purposes.

832. You think that if the common juries were taken wholly from the common jurors' list you would not have creditable or good juries?—Not so good as if they were mixed with special jurors.

833. Would you have them sufficiently good?—I think if the system were adopted of a proper revision of the jury list, and if there be added to that list men who are now excused for reasons that I have given, the jurors' book for the county of Cork would be a sufficiently intelligent one.

834. Do you mean excluding the special jurors?—No, I do not mean that; under no circumstances would I exclude special jurors from the general jurors' book.

835. You think that you could not get from the common jurors only men who are fit to try the causes?—I do not go that length, but I would like to have the chance of placing a special juror on it when it was his turn; in a great many cases you will see the jury empanelled as a jury of 12 men without a special juror on it; possibly on my last panel for the spring assizes I may not have had above five or six special jurors; I can only take them as I find them; I may find others as I go on. The burden of assize work would be very light when fairly distributed in that way; the only part that would be heavy would be the service of special jurors as grand jurors and assize jurors.

836. But at all events I understand you to say that juries composed of men who have only the qualifications of common jurors would not form a very satisfactory jury?—I will not say that; that is not my evidence; my evidence is that the jury panel is very much improved by adding special jurors to it, but I will not say that a fair panel may not be formed at the assizes from the jurors' book without having special jurors on it; I cannot go beyond that.

837. In your former examination, last year, at Question 3565, you were examined with regard to the formation of the jury panels before Lord O'Hagan's Act was passed?—Yes.

838. And you stated on that occasion that you had exercised the power of selection?—Yes, I did.

839. That is to say, in the case of the Fenian trials?—Yes, I did.

840. And then you said, in answer to Question 3567, at the end of the answer, "Had I known that any juror was of Fenian tendency, I feel bound to say, that I certainly should not have selected him?"—Yes, that was my answer.

841. Why would you not have selected him?—I do not think that a man of Fenian tendencies would be a proper person to place on the panel; that is my opinion still, and if I had the power I should still exercise it.

842. Under the present system that possibility exists

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exists, does it not?—Yes, but I have no power of selection.

843. But you had exercised that power before Lord O'Hagan's Act passed, and you believed that you exercised it judiciously and fairly?—In that particular case I exercised it judiciously and fairly; more particularly then than at any other time, perhaps.

844. Have you any reason to believe that your exercise of that power then was prejudicial to the administration of justice?—No, I think not.

845. I think you stated before, that you adhere to the opinion that you do not want to go back to the principle of giving the sheriff any power whatever over the jury panel?—For myself, I very much wish it should not be imposed upon us.

846. You think that it would be a burden unpopular to use, that it would lead to a great deal of trouble and doubt in the exercise of your discretion?—Yes, but that is not my reason for desiring that the duty should not be imposed upon us. I would not object to the latter portion of it; but it was a very invidious position to be placed in.

847. But in your own case, you certainly do not think that power was one which led to any maladministration of justice?—No, I am sure it was not.

848. Should you say, that you think it did so in any other case of the action of the sub-sheriff?—I would rather decline to give any opinion; I did hear of an instance where something of the kind occurred, but I prefer not referring to it

849. You say that you have heard of instances of that?—I have heard of one instance.

850. Have you any objection to mention what that instance was?—It would be an invidious thing to mention it specifically. I may mention, however, that it did not occur in my county.

851. Was it very long ago?—Yes, it was about four years ago, I think.

852. That was under the old Act, of course?—Yes, under the old Act.

853. Perhaps you will let me ask you whether it was hearsay, or whether you had absolute evidence of the fact?—Fortunately, I forget the name of the sheriff, and it is better that my memory should not be refreshed on that point, but it was in a newspaper account.

854. Did I really understand you to say, that the restoration of the power of selection might be judicious, but that personally you do not wish for it?—Yes, that is my opinion.

855. You think that it might be judicious to restore it, do you?—It may have some beneficial effect, and I have an idea that it might be restored partially.

856. In what way would you propose that it should be partially restored, and what good effect would it have?—I will answer the question if you wish me to do so. The idea I had was that it might be done in this manner. The sheriff, for assize purposes, may be empowered to summon all persons rated at 50*l.* and upwards, following the list alphabetically, but that he may exercise in every alternate case a discretionary power of placing on the panel any juror that he believed to be fit and qualified, but he should only exercise that power in every alternate case, and adhere all through to the alphabetical system. Say we begin with the letter A, he should take the first man rated at 50*l.* or upwards; then he comes to B, if on looking over the list he comes

Mr. *Bruen*—continued.

to a juror whom he knew was fit and qualified, although not rated at 50*l.*, he should have the discretionary power of placing his name on the panel; but when he came to the letter C, he should be again compelled to follow the present Act, and to take a man rated at 50*l.* or upwards. I would give him the discretionary power, in this alternate way, of simply placing the man on the list if he knew him to be qualified, and if he used that power in the letter C, he should not have that power in the following letter. I would only give him the option in every alternate case, and that would, perhaps, prevent any possible reflection being afterwards cast upon the sheriff of acting improperly.

Marquis of *Hartington.*

857. Supposing the first juror in letter B was rated at over 50*l.*, how would you have the sheriff act?—Then he should take him.

858. You said, did you not, that he was to take the first juror that stood at the head of the letter A?—Yes, at 50*l.* and upwards, and he then comes to B.

859. Supposing the first in letter B. is rated at over 50*l.*, may the sheriff leave him out?—No; he should take him.

Chairman.

860. Supposing C. is not, may he leave him out?—That would be a very unlikely thing to occur.

861. Do you mean that he should only exercise that power with regard to what you might call second letters, B., D. and so on?—No; I say that where he exercised that discretionary power in one case, when he came to the next letter in the alphabet he must follow the present Act. He may summon in A. and B. a man rated at over 50*l.*; he could only then exercise the discretion in the third letter; in the fourth letter he must again follow the Act of Parliament, and he would only again have the power when he came to the fifth letter. The reason I make it alternate is this, that if you did not make it alternate it would leave the discretion in the hands of the sheriff quite as it was under the old system, and he might then go and take a man rated under 50*l.* in A., B. and C., and to the very end.

862. But as now, you would never know at what letter of the alphabet that power had begun to be exercised; would not the same objection apply?—No; no matter what letter it began with, he can only exercise the power in alternate letters; let him, if you wish, make a selection in letter A., and then follow the present Act of Parliament in letter B.; you would find that one half of the panel would be composed of those rated at 50*l.* and over, the other half of those selected; and when the sheriff had followed the Act of Parliament he would be exonerated, and the one would go against the other

863. What particular argument would you urge for giving the sheriff this discretionary power to that amount which would not also go to give him a general discretionary power?—That system would not be open to the possibility of its being said that he had packed the jury; it is impossible he could do so if he follows the Act of Parliament in every alternate letter.

Marquis of *Hartington.*

864. He would not have the power of excluding anyone rated over 50*l.*?—Just so.

Marquis of *Hartington*—continued.

865. He would have a power of introduction and not a power of exclusion, is not that what it comes to?—Clearly so.

Mr. *Bruen.*

866. Then your suggestion comes to this, I think, that it would be a partial raising of the qualification to 50 *l.*, and a partial restoration of the power of selection to the sheriff?—Yes, that would be the effect, but if you raise the qualification you should only raise it for assize purposes, otherwise the jurors' book would be exhausted in a year by taking only those rated at 50 *l.*, and upwards; if we take them exclusively at that rating that would be undesirable, and that would be a further reason for giving a discretion to the sheriff, because the panel would take longer to exhaust; it would then take double the time if he exercised the discretion in every alternate case, and the panel would then last considerably longer, even though he took all the jurors rated at 50 *l.* and upwards in every alternate; but I do not mean to say I wish this plan should be adopted.

867. It would give you a great deal of trouble, would it not?—No doubt, but if there is to be a discretionary power at all, it would be better to do it in that way. I would make it mandatory to follow that order of course, and then he could not deviate.

868. With regard to your suggestion of having separate books for the different sessions districts, would you propose to have those books drawn out in dictionary order?—Yes, clearly so; it was my theory in my former evidence that there should be two books, one for sessions purposes, and one for assize purposes; but that may be now obviated, because the present Act has provided that sessions grand jurors shall not be credited for their services; if you were now to introduce just a column into the jurors' book, in which the session division in which the juror resided should be mentioned, it would be a great advantage, and would meet the case. I would only ask for the division not the districts, and I would then leave the sheriff the discretionary power of summoning from the districts; but the columns should state the quarter sessions division in which the juror resides. In our county there are baronies, portions of which lie in two different ridings, east and west riding; I think the initials of the riding in which the juror resided should also be added to the barony column; it is very difficult to know which portion of the barony the juror resides in at present; of course without local knowledge it is almost impossible to tell.

869. Of course all those additional books must increase the expense?—My former idea was that two books were absolutely necessary; but now that could be dispensed with if you adopt the system of an additional column to the present jurors' book, in which the quarter sessions division should be set out, and the riding, in the event of a divided barony. This would be no additional expense.

870. But the sheriff must, in summoning for those districts, leave the dictionary order, must he not?—As a matter of necessity he may have to; but when he came to summon from the districts, I am afraid he would. In summoning from the division, at present, we follow the dictionary order as nearly as possible; but if we made this change we should then require a small jurors' book within the general jurors' book, setting out each quarter sessions division in alphabetical order. Possibly that complication might be got over by merely introducing such a column as I have proposed.

Mr. *Bruen*—continued.

871. Have you considered the probable effect of the suggestion you made just now, on other counties besides the county of Cork. I mean with regard to the restoration of the partial discretion to the sheriff?—Yes, that would apply to all the other large counties in Ireland. The rating may be slightly reduced in some of the counties, say 40*l.* and upwards would answer in some counties.

872. But would it work in a small county?—No, I do not know about that; the present Act works very well in cities; in the city of Cork, for instance, therefore it is not necessary. I dare say that small counties would come within very much the same category; but I have myself no personal experience of small counties.

The O'Donoghue.

873. Is it your opinion that there would be an objection in Ireland, among the majority, to return to the old system of placing unlimited power in the hands of the sheriff?—Yes, I think they would prefer the present system.

874. I understood you to say, in answer to Mr. Downing, I think that some revision would be necessary?—Yes.

875. And you proposed a plan of revision?—Yes; my idea is, that the first revision should take place before the magistrates at petty sessions. I think that want of revision is the great mistake at present in the jurors' book.

876. You think that the revision should take place at the petty sessions?—Yes.

877. On whom would it devolve to make objections?—That would devolve on the juror himself; he could see that he had been returned on the list at least a fortnight beforehand, the day of revision by the justices to be mentioned at the head of each list, and if a person had good reason to show to the magistrates against his name being retained, the magistrates might take his name off; a constable, or any one else, should be at liberty to come forward and say that a name had been improperly omitted, and the magistrates should then have the power of adding such name to the list if they thought proper.

878. That is to say, you would omit a juror who would not be considered a proper person to serve?—No; I refer to the person who had unintentionally escaped the observation of the collector in returning the names, that is to say, a name that ought to be returned and was not returned.

879. What you propose would meet the case of those who might wish unfairly to avoid service?—Yes; those are the very class I wish to reach, and that is why I think the rating qualification is not sufficient; a large body of intelligent jurors escape in consequence of that. I think residence should constitute a qualification, whether a man is rated or not, if he is not otherwise exempt.

Mr. *Bruen.*

880. How could you possibly dissociate the rating and the residence, and put a man on the jurors' book because he is resident, without taking

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Mr. *Bruen*—continued.

taking into account his rating?—I do not see why that cannot be done.

881. He might be a pauper, might he not?—He would not be a qualified juror if he was; only those should be returned by the collector who were known to be fit persons within the meaning of the Act; it is on the collector that I would impose this duty, in making the return; I would impose that duty on him and no one else; he must return the names of all within his district whom he considered fit and proper, within the meaning of the Act; there are a great many who now escape.

Marquis of *Hartington.*

882. Do you mean totally without qualification?—Yes; totally without any rating qualification.

883. Without any qualification whatever?—No, without a rating qualification.

884. Then what other qualification can the man have which would practically answer the purpose?—He may be residing with his father and pay no rates

885. But what qualification is the rate collector to go by?—He is to go by his knowledge of the individual.

886. That is to say, there being no legally fixed qualification, his qualification is to be the rate collector's opinion?—That would come before the magistrates to decide afterwards

887. But what are they to decide upon?—Clearly on their local knowledge of the juror.

888. Yes, but they must have some direction to guide them, must they not?—I have myself a knowledge of every man in my barony, and I could give an opinion of every man in the barony.

889. Is that an opinion which if you were a magistrate you would act upon?—Yes, I would leave that discretionary power in the magistrates, for this class of people at present escape entirely; we should try and reach them.

The O'Donoghue.

890. But assuming that revision is necessary, is not the great object of that revision to keep off the juries persons whom might desire to serve, but who are unfitted for it; the number of those who would be willing to serve is extremely small, is it not?—No, I think it is very large; people will get out of it, if possible.

891. But is not the great object of the revision to keep off the list uneligible persons?—Yes; and the amended Act has had that effect to a great extent.

892. The amended Act has had that effect, has it?—Yes; it has struck off a great many ignorant and illiterate persons.

893. But persons are objected to for other causes than being ignorant or illiterate persons, are they not?—Yes; there may be other objections put forward, of course; however, that would be for the magistrates to decide.

894. But how are all those objections to be got at?—There would be, first the revision before the magistrate, and afterwards the final revision before the chairman.

895. Could we impose on the sub-sheriff the duty of revising the list and making objections, do you think?—I think the sheriff should be no party to the making of the objections; I would not let the sheriff interfere in any way, either by

The O'Donoghue—continued.

opinion or otherwise, with the construction of the jurors' book; I am opposed to that *in toto*; it would be open to the public or the constabulary, or any one, to object and let the magistrate decide afterwards; the present revision at the quarter sessions is only imperfect from want of local knowledge.

896. Is it not perfectly clear from that fact, that it is really no one's business to make objections?—There is a great deal in that.

897. Should not the duty of making objections be thrown on some one?—I put it on the juror himself, who is, I think, the proper person to object.

898. You only meet the case of the juror who is unwilling to serve, do you?—I think that would meet the case of every juror in Ireland. As a general rule I do not think there would be one who would not attend for the purpose of getting off if he could. At present the revision takes place before the barrister, and it is really the collector of poor rate who revises the list; he comes forward with a number of names struck off for incompeteucy; but unfortunately there is no one to question the manner in which he has exercised his discretion. I say that should be done by the magistrates, and those names which he had struck off I would have marked on the list as objected to by him, whether they were sanctioned or not.

Mr. *Plunket.*

899. I think in your former evidence you stated that so far as the county of Cork was concerned there never had been an insinuation cast on the impartiality of the sheriff?—Never since I have been in office.

900. You said also that, theoretically, you had no objection to selection by the sheriff?—Theoretically I have none.

901. None on public grounds?—No; my objection is personal. Of course it is open to the imputation that I may exercise that power improperly.

902. But, speaking generally, on public grounds, you have no objection to the selection by the sheriff?—None on public grounds.

903. Your plan seems to imply that you consider a selection desirable by the sheriff, for the purpose of putting on good men who would otherwise not be on the list; in fact, your plan is for the purpose of averting the possibility of suspicion?—Yes, and to augment the list. If you take all those rated at 50*l.* and upwards, you would exhaust the book in two years; but by giving the sheriff this power the book would last double that length of time, and it would ensure a more intelligent class being on the list; because, of course, the sheriff would only exercise that discretionary power when he knew that the man was intelligent. But I will assume that he did so in every alternate case, and that is the only system that I can see possible for restoring the power of selection to the sheriff.

904. And that would also have the effect of bringing up on the jury panel a great many experienced men, would it not?—Yes; when a man was capable of bearing the expense and was intelligent.

905. You said in your evidence last year, that when the Fenian trials were going on, you would have exercised your power of selection, if necessary, to put off people with certain sympathies,

Mr. *Plunket*—continued.

thies, did you not?—Yes; and I would do it still, if I had the power.

906. Would you not exercise that power not only in the case of those who sympathise, but in the case of those who might be supposed to be under influence for ulterior considerations?—Presuming the question to point to fear, I would not go that length.

907. Or interest?—No; I would not do it for fear or interest; I would not leave them off for either of those two reasons; but merely if I knew him to have a Fenian tendency; the other is for the jurors own consideration afterwards.

908. Supposing a similar case to arise, unfortunately, and that you had political trials in your county, if this plan which you suggest became law, do you not think that looking over the lists in that way, besides selecting some names of persons whose qualification was less than 50 *l.*, it would be well to have the power of striking off any name of a person who you thought might sympathise with Fenians?—No, I would not do that; I would not go so far as that. That is giving too much discretionary power, and casting too invidious a duty on the sheriff.

909. But you said in your evidence last year, that you would have exercised that power yourself?—Yes; I would, because I had then unlimited discretionary power; but if I were in any way limited, that is different; that is the view I put forward, and that would relieve me from the possibility of its being said that I had any improper motive in the matter.

910. But besides your personal inclination, you consider the interests of the public, do you not?—Yes, no doubt.

911. For the public advantage, suppose similar circumstances were to arise again in Ireland, would it not be well for you to have that power?—It would be beneficial for the good administration of justice.

912. But would it not be so?—On that theory it would.

913. The occasion would not be so likely to arise in the county of Cork, would it, where the population will bear so high a qualification as 50 *l.*?—No; I think it would be less likely to arise, because any farmer with a qualification of 50 *l.* has as much stake in the county as anyone else.

914. But in many other counties a qualification of 50 *l.* would be of necessity impossible, would it not?—Yes; but it would be possible in some of the other large counties as well as Cork.

915. But in small counties *à fortiori* on public grounds the power of selection is desirable, is it not?—Yes; unless you formed a scale for other counties it would; I see that you have done so in your amended Act, and I do not see why it should not be done in small counties, in the manner I have suggested.

Mr. *Mulholland.*

916. If so many as 40 or 50 persons who attended were struck off by the judge as being unintelligent, would it not be a great public advantage to strike those names off before they came up?—I do not think I said that the judge struck them off because they were unintelligent persons; I said that I did not know what passed in the judge's mind; the judge struck them off because he thought they should be excused; the judge did not put it in that way. A juror came up and asked to be excused, and the judge believed from his personal appearance that he was incapable of bearing the expense.

Mr. *Mulholland*—continued.

917. I thought you gave it as your own private opinion that they were unintelligent?—Yes; I have no hesitation in saying that I think they were of the ignorant class.

918. But if 40 out of 150 were not in your opinion sufficiently intelligent to be on the jury, would it not have been better to excuse them from the panel before they came from such great distance?—I think that a constant revision of the jury list would obviate that in time, but at present the collectors seem to think that they are bound to return the names of jurors again even though they have been previously struck off. I believe that the Act requires them to return the names on the book year after year, although they have been previously taken off as being ignorant or illiterate; I think there should be a provision in the Act, that no juror's name be again returned on the list who had been taken off, as being a person over age, ignorant, illiterate or unintelligent, or being a person who had been excluded under Section 7 of the Act of 1871.

Mr. *Bruen.*

919. Do you extend that exclusion to those excused in the court by the judges?—No; I merely mean with regard to the revision before the chairman; the names that are now struck off before the chairman; those names will be again returned in the jurors' list, and the chairman will have again to go through the same form, and that is necessarily a waste of time. We shall never get a perfect jurors' book if that system is continued. I think after a revision of two or three years, you will have a perfect jurors' book.

Mr. *Mulholland.*

920. I suppose that in addition to those who were excused there were certain other persons who were told to stand aside?—Yes.

921. You stated in your last year's examination that in your county some people had to come 70 miles?—Yes.

Mr. *Herbert.*

922. Have the special jurors worked well in the county of Cork?—The amended Act has worked well, but there is room for further improvement; the book is still too short of names; 508 names is too small; I think it should be augmented by some means, and the only means that is practicable, I think is, that all the freeholders of 50 *l.* in the county of Cork should be added, irrespective of their local qualification; I have stated, I think, that all officers in the Militia, half-pay officers in the Army and Navy, and retired professional gentlemen, ought to be added to the special jury list also, unless they were over age; they would make most intelligent special jurors, irrespective of their rating.

923. Have you heard any opinion expressed with regard to the property cases that have been tried by those juries?—No, I have heard no fault found with their verdicts; we have had no particularly important trial with regard to property for the last year and a half.

924. You have expressed an opinion with reference to the advisability of serving the summonses on the jurors by the post office?—That is only with reference to sessions grand jurors and special jurors.

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Mr. *Herbert*—continued.

925. You do not think that summoning the common jurors by post in the distant parts of Bantry, and so on, would do, do you?—No, it would never reach them; they would have to send for their letters, and they would never call for a letter if they did not expect it; they would leave it there; that would never have the desired effect.

Sir *Colman O'Loghlen.*

926. With regard to the attendance of jurors, do you find any change in the attendance of jurors since the new Act came into operation; do they attend more numerously than they did before?—No; a certain class of jurors have exempted themselves, because they have taken it into their heads that they would be associated with low, ignorant people, and they object to that in the county of Cork.

927. I understood you to say, that out of a panel of 150 at the last assizes, between 30 and 40 were excused by the judge?—Yes, possibly it was 40.

928. In fact, were not a great many of them excused for being over age?—Yes.

929. Their names ought to have been struck off at the sessions, ought they not?—Yes.

930. Some were infirm?—Yes.

931. Some were deaf?—Yes; there were many reasons given; all gave reasons which were sufficient to induce the judge to exercise his power of exempting them.

932. Some could not read or write?—Yes.

933. Those were persons who would have been struck off, if there had been a proper revision?—Yes, clearly so.

934. I understood you to say, that you think, since the passing of the recent Act of Parliament, the jurors have been better in Cork?—Yes, I see a great improvement in them under the amended Act.

935. At the last assizes there was a case of robbery of arms; a case of political tendency, was there not?—Yes.

936. But there was a verdict of conviction, was there not?—Yes.

937. Is it not the fact, that on that trial the jury was very equally divided with regard to their religious opinions?—Quite equally, I believe.

938. That was a case involving political feeling since the passing of Lord O'Hagan's Act?—Yes, and one that has been spoken of since with great satisfaction.

939. Now, with regard to summoning jurors, do you think that it would be better to have the summonses sent in all cases by post?—No, I am certain there would be a failure of justice.

940. You know that it is done with regard to voters, but you think it would not act with jurors?—I think not.

941. With regard to the selection of jurors; you have been for a long time connected with Cork?—Yes.

942. The high sheriff never interfered before with the selection of jurors, did he?—No, never.

943. When you speak of the sheriff it is the sub-sheriff, is it not?—Yes, the high sheriff is responsible, but it is the sub-sheriff who performs the duty.

944. I understand you to say you would not be inclined to revert to the old system?—Certainly not.

Sir *C. O'Loghlen*—continued.

945. That would be against the public feeling in the county of Cork, would it not?—The majority are satisfied with the present Bill.

946. Do you state that in practice you always return the first person in letter A., and then that you select B.?—No; I never select them; I always take the first names; I adhere strictly to the wording of the Act of Parliament.

947. At all events, your decided opinion is that the jurors have been much improved since the passing of the late Act?—Decidedly.

Mr. *Law.*

948. By whom are the divisions of the county made for sessional purposes; is it by the Lord Lieutenant?—Yes, originally.

949. If each of the present divisions were subdivided into divisions corresponding with what are popularly called sessions districts, that would meet the case at once, would it not?—Yes.

950. You want no legislation; you merely want the action of the Lord Lieutenant to make the divisions correspond with the sessions district?—Just so.

951. In the west riding of the county of Cork there is a class of cases, I believe, arising out of family feuds, called faction fights?—Yes.

952. Would the summoning of jurors from the immediate district interfere with the administration of justice in cases of that kind?—It would not affect that particular district, because that district is not sub-divided; I am sure Mr. Fergusson alluded to the district of Macroom, because he complained of that to me.

953. But not confining ourselves to Cork, do you think that that system, if adopted generally in Ireland, would at all interfere with the administration of justice in cases of local excitement?—I think there should be a discretionary power left to the chairman of the court of quarter sessions in issuing his precepts; he might have the power to direct jurors to be summoned from the entire division if he thought proper.

954. Or cases of that kind might be sent to the assizes at once?—Yes, and you would simplify the business at once very much by doing that.

955. You suggest that the collectors should return not only the names of rated occupiers, but also any other people, irrespective of qualification, whom they thought fit and desirable?—Yes, any resident.

956. Would it meet your view if some qualification were introduced to catch those people, say the eldest sons of barristers, the eldest sons of persons in an official position, graduates of universities, half-pay officers and people holding a certain amount in the public funds or shares in public companies?—I thought of the income tax valuation, but my idea had more reference to special jurors in that respect. But half-pay officers should certainly be added to the special list, though they were receiving pay from the Crown, they would try only civil cases.

957. The rate book contains, does it not, the names of ratepayers who are not rated occupiers?—Yes.

958. Would not the rate book enable you to get at the property qualification irrespective of the rated occupation?—If it were properly made up it would.

959. As for the voting for guardians, for instance?—Yes.

960. You

Mr. *Law*—continued.

960. You would in that way, would you not, get at the people who receive rents, though they are not rated occupiers?—That had not occurred to me before, but it would be desirable; I wanted to reach the class of men who get their mothers rated instead of themselves, and so evade serving on juries.

961. You might perhaps put on every person who is either rated himself, or whose immediate relatives are rated, if he is living with them in a rated house or farm?—Yes, you would get at them in that way; of course, if they were unfit men afterwards they would be struck off, but it is a great pity that they are totally exempted now; I would be very anxious to reach them; I do not know whether it would not be the simplest mode to leave a discretionary power to the collector to return them simply as qualified residents.

962. Would it be a desirable thing at the commencement of the sessions and assizes to call over the list of those who have been duly summoned, and at once impose fines on those who did not attend?—I think that leaving the power in the discretion of the judge is almost better than that, that is to say, leaving the judge to do it at any time he pleases; on the first day there is generally the worst attendance, and possibly, if you selected the second day it would be better.

963. But experienced jurors on the first day stand by, and do not answer to their names, do they not?—Yes.

964. And they escape serving?—For that day they do.

965. And they escape being summoned until their turn comes round again?—Yes; or if a juror sends in a medical certificate he also escapes.

966. But is it not desirable that if they are summoned to attend the assizes their attendance should be enforced?—I think it is very desirable that they should attend, and that fines should be enforced in the event of their not doing so, but the time when it should be done is another question; in consequence of the good attendance of some of the jurors, the judges take off the fines from others, but I know that that is not generally appreciated by those who do attend.

967. How much did you levy last year?—£. 9, I think.

968. What was the aggregate amount of fines nominally imposed that year?—So many fines of 10*l.* were imposed that they would have amounted in all to thousands of pounds.

969. The people knew that it was almost a matter of form, did they not?—Yes, under the old system; but under the new system they do not take it so.

970. At present you have only inexperienced jurors, you said?—Yes; the intelligent class absent themselves, believing that they will not be fined ultimately.

971. Your present experience, then, is not a fair experience of the whole of the panel, but is derived from the worst part of the panel?—Yes; it may be.

972. What mode do you suggest for summoning common jurors?—I think that Mr. Fergusson's plan is a very good one for using the summon servers at petty sessions; they are a numerous body, and I think that would meet the case.

973. Would the process servers at quarter sessions be as good as the process servers at petty sessions?—Yes, if there were two or three for each quarter session division, and they were paid extra for performing the duty.

974. They would be under the control of the chairman, would they not?—Yes.

975. And they receive payment out of the Consolidated Fund, do they not?—Yes, but that should be added to for this extra duty; in my evidence before the Committee last year that was one of my theories; I think that there should be two or three process servers selected by the chairman in each division, and entirely under the control of the chairman.

Marquis of *Hartington*.

976. If the attendance of jurors were enforced by fines, the number of jurors required would be considerably reduced, would it not?—Yes, very much.

977. You require 2,400 jurors for session purposes?—Yes, including grand jurors.

978. And 500 for assize purposes?—Yes.

979. If you could have a good revision and the enforcement of the attendance of jurors, have you any idea to what number you could reduce it?—Yes, if every man attended, and the fines were enforced, I think the panel might be reduced to 150 for each assizes, instead of 200 as now; it may be reduced by one-fourth; that would be taking off 50.

980. Could you reduce the number required for quarter sessions, do you think?—I think not safely, because you must have 23 grand jurors; of course there are contingent cases of men being ill; you cannot safely reduce the grand jury below 36 or 34.

981. What do the grand jury at quarter sessions do?—They find the bills before they go before the petty jury.

982. Have you formed any opinion of your own with regard to whether there is any necessity for summoning grand jurors for the quarter sessions?—They perform their duties very well, but they might perhaps be dispensed with altogether, and the business might be done without grand jurors at all.

983. Is there any great convenience in taking criminal cases at both quarter sessions in the divisions where the districts are subdivided; you have mentioned Middleton and Fermoy, have you not?—Yes.

984. Criminal cases are taken at each place, I believe?—Yes.

985. Would it be inconvenient to have the criminal cases disposed of in one of those places?—The only consequence would be that the criminal cases would be held over three months longer, and that would be at a considerable cost to the country.

986. Does not the chairman go direct from Fermoy to Middleton?—No, it is every alternate session, and the result would be that prisoners would be held over for a longer space of time; but that would only occur in two instances in the west riding and two instances in the east riding.

987. I suppose you do not see how you could reduce the number of jurors except by doing away with the grand jury?—I am afraid not; 64 is the number which I summoned for the session.

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Sir *Colman O'Loghlen.*

988. Supposing you had only criminal cases tried in the county town you would only have one grand jury would you?—That would necessitate their being held over until the sessions were held there.

989. Now suppose, say in Clare, that the criminal business should only be discharged in Ennis, in the county town, would not that answer the purpose?—I quite agree with that; the only objection is that in that case you would only have those particular jurors from that division.

990. But it would save the expense of conveying prisoners and witnesses to and fro, would it not?—Yes, they would all be tried at Bandon or Cork; Cork gaol is within a mile of the courthouse, and the chairman sits four times a year in Cork; the chairman of the west riding sits at Macroom four times a year, and if it could be done at Bandon it would be a desirable place.

991. That would save all the grand juries, would it not?—Yes, it would save all the grand juries except those required at the particular session town, and it would save a vast portion of the petty jurors also; you would then only require petty jurors in civil cases where notices were served.

Marquis of *Hartington.*

992. I do not understand you to recommend that the right of challenge on the part of the Crown in certain cases should be given up?—No, I never said that it should be given up.

993. But as I understand your plan, half the panel would consist of jurors taken alphabetically and rated over 50 *l.*, and the other half might consist of jurors selected by the sheriff and rated below 50 *l.*?—Yes, quite so.

994. Then in that class of cases in which the right of challenge is open to the Crown the Crown might set aside the whole of the jurors

Marquis of *Hartington*—continued.

rated above 50 *l.*, might it not?—Of course it is possible.

995. The jury, in any particular case, may be taken entirely out of the selected jurors, may they not?—The only way in which the Crown could get at that fact would be by the inspection of my jurors' book which I would not show them; the qualification is not given on the panel.

996. But it would be quite possible for the sub-sheriff to tell the Crown solicitor, would it not?—Quite possible, if he was corrupt enough to do so.

997. There would then be a possibility of a special packed jury, would there not?—No doubt it would be possible.

Mr. *Bruen.*

998. It would be possible for the Crown Solicitor to get access to the jurors' book, and so find out the rating of the different persons on the panel, would it not?—No, I do not think he would, and I would not permit it to be done.

Chairman.

999. Have you anything to state in addition to what you have laid before the Committee?—As to the payment of jurors in civil cases at assizes, the present common jurors are paid a guinea for a verdict, and I was just going to suggest, having seen the English Act, that 3 *l.* should be paid for verdicts in common jury cases, instead of a guinea, as it is now; that would provide a fee of 5 *s.* for each juror in each case. It is possible jurors may try two or three cases during the day, and it would help to pay their expenses. My observations merely apply to assize jurors in record cases.

1000. Would you pay those who were summoned, whether they tried the cases or not?—No, certainly not, and I would pay no Crown juror.

Thursday, 14th May 1874.

MEMBERS PRESENT:

Sir Michael Hicks Beach.
Dr. Ball.
Mr. Bruen.
Viscount Crichton.
Mr. Downing.
Sir Arthur Guinness.
Marquis of Hartington.
Mr. Henry Herbert.
Mr. Law.
Mr. Mulholland.
The O'Conor Don.
The O'Donoghue.
Sir Colman O'Loghlen.
Mr. Plunket.
Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL HICKS BEACH, BART., IN THE CHAIR.

Mr. HENRY WEST, Q.C., called in; and Examined.

Mr. *West*, Q.C. 14 May 1874.

Mr. *Bruen.*

1001. I BELIEVE that you are Chairman of the County of Wexford?—Yes.

1002. And you have been for a long time in that office?—Fifteen years altogether, between other counties and Wexford.

1003. You were also Crown prosecutor for a longer period than that, were you not?—Yes; for more than 25 years I have been retained by the Crown in special cases on the Connaught circuit, and for the last 18 years I have been permanent senior counsel in Galway.

1004. You have had very great experience of the working of the Juries Act, both before Lord O'Hagan's Act was passed and since, have you not?—I am sorry to say that, except one or two in Ireland older than myself, no one, I think, has had more experience.

1005. With regard to the change which was made by Lord O'Hagan's Act, I believe that to a certain extent you highly approve of it?—It was absolutely necessary to extend the area for the qualification of juries. From what I saw of the trial of Barrett, for shooting at Mr. Lambert, where I was engaged for the Crown, it was evident that many of the qualifications had disappeared.

1006. Was that failure, in your opinion, the cause that the trial of Barrett in the first instance proved abortive?—Barrett's was the case of a man who left London on Saturday night and was caught on the Sunday with a return ticket, having hired a pistol in London; there was a special commission to try him; the offence was committed while we were engaged at the ordinary assizes in Galway; it was uncertain whether Captain Lambert would be sufficiently recovered from his wounds to be able to attend if there was an adjournment; I declined to move the adjournment; then there was a special commission issued, which altered the issue into a question of a general right to take vengeance on landlords who had not behaved properly; the result was that there was great commotion in the county; stones were flung at the Chief Justice. At the trial most of the gentry absented themselves, and then there was a disagreement on the jury; then

Mr. *Bruen*—continued.

there were two trials subsequently in Dublin; at the second trial there was a disagreement, and on the third trial there was a verdict of acquittal; that was previously to Lord O'Hagan's Act passing. Mr. Butt had challenged so many of the jurymen on the second trial for want of qualification, that it was apparent that scarcely a juror in Dublin was qualified.

1007. In fact you approve of that part of Lord O'Hagan's Act which extended the area of qualification?—Yes, that was absolutely necessary, in my opinion.

1008. And you think it is a right principle that the area of service should be extended so as to embrace all those who are fit to serve on juries?—No doubt it is a severe duty, and the larger the number who can be made liable to serve, the more the burthen will be lightened over the whole body.

1009. With regard to the qualification of jurors, do you think that any improvement can be made either in Lord O'Hagan's Act, or in the amending Act of last year, in such a direction that any fresh qualification may be added?—I believe that if the 50*l.* freeholders resident in the county, and the 20*l.* freeholders, such as we have now on the register, were added, the result would be but slightly appreciable. I inquired in Wexford, and the clerk of the peace told me that he thought about 20 might be added by that means.

1010. With regard to the present rate of qualification for jurors, are you prepared to give any opinion whether the qualification could be raised or not?—I should be afraid to raise it much higher. I do not hold rating to be an unerring test of a man's competency. I should be afraid that if we raised it, we might exclude some very good men. I have not studied the subject much, however.

1011. Proceeding with the Act, what do you say with regard to the exemptions; do you approve of the exemptions mentioned in the Act?—I know that by exempting jurors over 60 we have lost more than 10 per cent. of the best jurors in Wexford. I have heard the clerk of the

Mr. *West*, Q.C.

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Mr. *Bruen*—continued.

peace say, over and over again, "There goes one of the best men we have," when a man over that age has been struck off.

1012. You think that the age might be extended, do you?—Yes; I think that 65 would be a fair limit, and up to 70, unless the juror himself wished to be exempted; we have very many hale men in Galway and Wexford beyond 70 years old.

1013. Are you aware that a Juries Bill has been brought into Parliament for England?—Yes, I have read it, and I think there are two clauses in it which it would be a great benefit to extend to Ireland, so as to have the same legislation on the same subject matter for the two countries. Many of the misfortunes of Ireland are traceable to the clause in Acts of Parliament: "This Act shall not extend to Ireland." I cannot see why, with regard to the revision of the juries' list, the choice left to the sheriff should be different from what it is in England.

1014. I think it is the 5th clause of the English Bill which deals with the exemptions, is it not?—Yes, and *mutatis mutandis*; I think we might have that clause in Ireland.

1015. Is there another clause in the English Bill which, you think, introduces a principle that might be extended to Ireland?—Yes, the 49th clause; that does not tie up the sheriff by the inexorable alphabet that we have in Ireland, it leaves him a discretion.

1016. Will you kindly read the clause?—"Every sheriff shall enter or cause to be entered in the jurors' book, which he shall have in his custody, against the name of every man who shall be summoned to serve on any jury, the date of such summons, and the court where such juror shall be required to attend; and shall copy all such particulars as aforesaid as may be required for the purpose of distributing the burden of service on juries, in as fair and impartial a manner as may be among the whole body of men liable to serve from the jurors' book or books, for one or for as many more preceding years as may be necessary."

1017. Now, coming to the revision of the jury lists, are you of opinion that the best tribunal for the revision of the jury lists is the assistant barrister's court?—No; I am of opinion that it is the worst tribunal. The barristers are total strangers to the county, they have no local knowledge, and they have no means of trying the issues sent to them. The tribunal has no means of trying the question of fitness. In the registration courts, which I believe gave rise to the new system, we have to decide by evidence properly applicable to each case; we have to register men who have a certain qualification of rating, and who have paid rates, and we have the means to prove it. Those that claim come forward with their title deeds and prove their case. We have all the material before us for deciding the issues sent to us, but as a tribunal for revising jurors we have no such means.

1018. What tribunal, in your opinion, would be the best for revising the jury list?—I think the old system of the magistrates is the best, extending the number of places. Under the old system there were two in Wexford, one for each division of the county, but as there are 12 petty session districts, I think if the revision was to take place in the petty sessions district before the magistrates, attended by the resident magistrate, there would be in every district one or two men who would see to the duty; the magistrates have local knowledge of all the people living round there; the landlords, for the most part, and owners of property would be there. I have known in Galway gentlemen of large property attending those jury sessions for the express purpose of putting on those that ought to be on, and keeping off those that ought to be off.

Mr. *Bruen*—continued.

1019. Will you kindly look at the 19th clause of the English Juries Bill?—That is a clause which I am very glad to see. I think it would just suit us in Ireland.

1020. Will you be good enough to read part of that 19th clause, beginning at the 12th line: "it shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge," and so on; do you agree with that?—Yes, certainly; the gentlemen know their tenants, and they know whether they are too poor to serve or not, and other facts about them. At Galway it is a miserable sight to see the Connemara peasants, who have been summoned, unable to get away without a subscription to get them home.

1021. The clause goes on: "That he is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries, to strike his name out of such list." Do you think the words, "or in other respects unfit to serve on juries," are words that could safely be introduced?—They would, I think, be very useful in Ireland, and might be very safely introduced into a Bill for Ireland.

1022. With regard to the summons of the sheriff to the jurors for service at the assizes, do you think that the service of the summons should be by post?—I think it would depend on the counties; in counties like Wexford it might safely be left to the post, but in Galway I should say not. I am counsel for the post office, and I have seen it proved over and over again that letters have been left at the post office from market-day to market-day, even though they contain money, as they often do, from America. A man gets notice now and then from his neighbours that their is a letter lying for him at the post office, and then of course he goes and looks for it, but it is a long time first.

1023. Do you consider that personal service is necessary?—If you want to fine a man you must prove that he has been served.

1024. What officer should you suggest as being the proper person to have the charge of the service of the summonses?—I have always thought that the process servers in our civil courts would be very good officers to serve jury summonses; they serve in each county 800 or 1,000 at a time; they keep their book, and they are ready to prove the service of processes in civil cases; if they do not do it, they are fined, or their salaries are stopped; if the same pay were given them in criminal cases, it would be a very useful machinery for the purpose.

1025. Then coming to the question of a discretion being left to the sheriff in the formation of panels, do you believe that to a certain extent that discretion may safely be left to the sheriff?—I do; I think it is wrong to tie him up altogether.

1026. There was a Bill brought into Parliament

Mr. *Bruen*—continued.

ment in the year 1854 by Sir John Young, then the Solicitor General for Ireland, who is now Mr. Justice Keogh, and the words of the Bill were that the precept should run thus: "Requiring the sheriff to summon a sufficient number of the most competent persons named in the jurors' book, selecting, as far as practicable, having regard to competence, the names of such jurors as should not have been summoned, and have attended as such at the last preceding assizes;" would those words, in your opinion, be a fair statement of the law for the service of jurors?—Yes; I think that would be a very fair form of precept.

1027. You are, I believe, very sensible of the defects of the present system, which is a mechanical system entirely, is it not?—Yes; that was illustrated at the last assizes.

1028. Can you give the Committee instances in which you find that system to create failures?—The first time Lord O'Hagan's Act came into operation, a defect which I had long observed in the general system in Ireland made the defects of the Act much more patent; it is the abuse of the system of challenges that I refer to. In felonies, as the Committee are aware, a prisoner has the right of 20 peremptory challenges, and as many more as he can show cause for; the system of defence on the Connaught Circuit has been this: to get rid, as far as those 20 peremptory challenges will go, of every man who appears to be intelligent, and of independent position. The immediate consequence of the new Act was this; it gave us far better men, but it gave us far worse; the old system gave us a more even staple, and accordingly, under the new Act, when the 20 names were put off the panel, we had a residuum of a kind that I had never seen empannelled in the box before.

1029. Of course it was a necessary consequence of the extension of the area of service for jurors, that you obtained a very much larger number of persons who were not competent for the duty?—Yes, that was the direct consequence of insufficient revision, and of taking away from the sheriff any power of selection; at the assizes, I declined to try in three cases; I refused to go on. I postponed them, because of the complexion or constitution of the jury, and this after consultation with four officials of the county.

1030. It has been suggested by one of the witnesses who have been examined before, namely Mr. Fergusson, that the proper person to exercise the selection in the formation of the jury, is the Crown solicitor, by putting in force his right to call upon the jurors to stand aside; is that your opinion?—I think that the Crown solicitor is the proper person to do it; the Crown counsel never like interfering. I stand mute when the Crown solicitor is exercising that function; but what happened in Galway at that time and since the amending Act is this: the Crown order to stand by every man they think ought not to serve, and when the prisoner has got rid of 20 men, we are left without a jury, and the Crown have to come back on the very men that they had before set aside, and thus after provoking their resentment by questioning their indifference, we have to put them on again; the consequences any one can imagine; there is generally no agreement, and sometimes an acquittal in the clearest cases.

1031. The injury to the juror himself by a challenge in open court is far greater, is it not,

Mr. *Bruen*—continued.

than the injury or constructive injury that he is supposed to receive by not being put on the panel?—A challenge in open court is a matter of laughter; a man's name is called; he stands up in some corner of the court, and instantly the attorney says, "Challenge"; that is a source of laughter; there is no injury to a gentleman who is challenged, but as to the common jurors whom the Crown orders to stand by, Mr. Henn, the chairman of Galway, told me a remarkable instance of their taking offence.

1032. Which is the most injurious, do you think, to the personal feelings and reputation of the juror, to have an indistinct personal objection made to him in public, without the power of objection and reply, or to suffer the constructive injury of not finding himself summoned to serve on the jury?—That constructive injury in his eyes would be a positive gain; he is glad not to serve.

1033. Since the passing of Lord O'Hagan's Act, and ever since the passing of the amended Act, has this power of the Crown Solicitor to set aside jurors been exercised far more extensively than it was before?—Certainly, and it was necessary to do so.

1034. With regard to your own court of quarter sessions, I suppose you have not so much reason to complain of the operation of the Jury Act, have you?—No, I have not. When the Act first passed, speaking of questions that used to be left to me alone, as between men of better station and inferior men, I found the attorneys wished to get juries to try them, making it a class question, but putting the case fairly to the jury that system did not succeed well, for there would be no agreement, and they have since come back to be satisfied with the chairman.

1035. So that in fact the system of trial by jury has become a dead letter?—In such cases as I referred to, I think class juries have been formed; the man I most rely on as a man of sagacity and intelligence in my county has told me that as between him and an inferior class, there would be no chance of justice being done, in consequence of the class of jurors that this Act has brought into being.

1036. Was there any remarkable instance within the last year or two in Wexford, that you would like to mention to the Committee?—Yes; there was a case where one gentleman fired four pistol shots at another; this the papers called "a fracas in the hunting-field;" there were four balls absolutely discharged; that case came on for trial, and it had got abroad in the county that the accused was a favourite of the people, and the prosecutor had to consent that a verdict for common assault should be accepted; he told me the reason was that he was afraid the jury would not, though it was done in the face of the county, convict the prisoner. The prisoner's adviser, when I asked him how he effected this success, said, "I put the frieze-coated gentlemen on him, and made him consent to accept a plea of guilty for common assault."

1037. On the whole, do you think that this new jury system has been founded on distrust?—I think it has been founded on distrust in two departments; distrust of the magistrates doing their duty, and distrust of the sheriffs making a proper selection.

1038. In your opinion, that distrust was not well founded?—I think not; it was to meet cases

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Mr. *Bruen*—continued.

of well or ill-founded traditions of the past, and not the possibilities of the present.

1039. With regard to the payment of jurors, do you think it would be a good thing to introduce a system for the payment of special and petty jurors?—Special and petty jurors are already paid in civil cases; in criminal cases I would say not.

1040. Have you formed an opinion with regard to the necessity of grand jurors in your own Court?—At quarter sessions they are the merest mockery; they were very good in the olden times, but now that every case is so examined into by the magistrates in the presence of the prisoner and his attorney, it seems to me the greatest absurdity to bring 23 men 40 miles from their work, to say whether a man shall be tried for stealing a pair of brogues, or striking a man on the head, when it is clear from the information that the bench has to read, that it is a case to be tried; the grand jurors are very good men, no doubt, but we do not want them.

Chairman.

1041. Does that apply to the assizes, or the quarter sessions?—I should limit myself to what is before me. There are cases at the assizes of a higher nature where it might be right for a grand jury to see whether a man should be put on trial for a matter of opinion. It may be said that if the grand jury were dispensed with at quarter sessions they would also be dispensed with at the assizes; but I am not prepared to say what ultimately would be the case.

Mr. *Bruen.*

1042. Will you be kind enough to give the Committee your opinion with regard to the question of challenges?—The number of challenges was fixed in the time of Henry the Eighth, when there were no prisoner's counsel allowed, and the witnesses for the prisoner were not even allowed to be sworn, and when there were very many capital felonies which are now not so, but still the challenges remain. It is a most inconsistent system. You can transport a man for life without giving him the benefit of a challenge, but for the smallest felony he has that right. There is no doubt that it is the great object of the prisoner's advisers at trials to get juries so constituted, by eliminating every respectable steady man, that the real merits of the case shall not be tried. I would say that in capital felonies the system should remain untouched, but in ordinary felonies, which are now the greatest part of the work, I would say that there should be a great reduction or total abolition of the system.

1043. Under this system it is at present almost impossible for the Crown to obtain a conviction, is it not?—I have consulted with the best prisoners' counsel on the Galway circuit, and he agrees with me that under the present system of juries, coupled with that challenge system pushed to extremities, it is impossible for the Crown to reckon with any reasonable probability on obtaining a verdict. The result is, that at the last assizes, in three of the heaviest cases there was a disagreement. Of those cases I cannot speak, for they will be tried again, but there was one very remarkable case of manslaughter. A man had been killed by a hurl-stick, and the defence was, that if he had not killed the man the man would have killed him. Chief Justice Monahan told him that

Mr. *Bruen*—continued.

was no defence, and said to the jury, "You must convict the prisoner." The jury retired to their chamber, and after a considerable absence the prisoner's counsel told me, "This man has been in gaol seven months already." I replied, "If he had pleaded 'Guilty' the judge would not have given him more." He then pleaded "Guilty," and the judge called for the jury, and they said, "We cannot agree." The Chief Justice then said, "You may save yourself further trouble, gentlemen, for the prisoner has pleaded guilty." That was an instance of disobedience by the jury, which spoke very strongly with regard to their constitution.

1044. Do you find that the taking away from the sheriff of any power of discretion in summoning juries has caused great hardship on many of the jurors in your own court?—Yes; in Wexford the men in one division of the county are brought from the extreme southern point over to New Ross, a distance of nearly 50 miles, for trifling cases. We have them complaining that the very cases they came to inquire about were not tried, but that the prisoners pleaded guilty. It just happens at the time when the men cannot well leave their homes, in the spring time and harvest. They are always complaining to me of the distance. It could easily be limited by giving power to the sheriff to summon, say, within the polling district, or a barony immediately adjoining, but it is not sufficient to say division, because that is 45 miles in extent.

1045. In fact it includes Saltee Islands, does it not?—Yes, but I have ascertained from the sheriff that there are now no resident jurors on Saltee Islands

1046. Have you any other suggestions which you could give to the Committee, as to any other amendment in the Act of Parliament which you think necessary?—I think I have already explained, that if at petty sessions it was left to the magistrates to revise the list, and that the resident magistrate was required to attend, that is what I would advise. With regard to the selection, I would certainly give a power of limited selection by this Act of Parliament. Surely the magistrates in Ireland are as well inclined to do their duty as magistrates in England. It is quite as necessary at all events to have an accurate supervision of jurors in Ireland as it is in England. When I am sitting in my court, the revision is the merest mockery, it is like a presentment at the assizes. "Is there any objection to any one of these persons." I sign my name, a few old men have their cases brought before me. I put my initials, and the thing is over in 20 minutes. I have no one in court but a few officials.

Mr. *Verner.*

1047. You know Dublin well, I believe?—Very well.

1048. Have you heard of any case in which jurors have been called in two courts?—I gave up practising in civil business, when I accepted the Chairmanship, and therefore I am not an authority on this point. I know that to be so, but it is more from hearsay than actual knowledge.

1049. You have heard I suppose that a juror might be fined in one court while he was attending in another?—Yes, but he would get off the fine very easily in that case.

Mr.

Mr. *Plunket.*

1050. I understood you to say that you are entirely opposed to the alphabetical system?—Yes, it is an indiscriminating system, and one that cannot be applied to human affairs. You must give a power of selection to some sentient human being.

1051. You think, if I rightly understand your evidence, that the sheriff should have this power of selection in order, for one reason, that he may distribute the burden of service equally over the jurors?—Yes, if he is a fair man he will do so.

1052. Also you are of opinion that in times of political excitement in Ireland, when political trials may take place, it is an advantage for the sheriff to have the power of putting off the list persons who might be disposed to sympathise with the prisoner?—Certainly.

1053. Do you consider that that is necessary for the carrying out of the law in times of excitement in Ireland?—There is no doubt of it; I may add, with regard to our own court of revision, that I have heard the judges say it is not constitutional that the judge should select the jury, whom he is immediately afterwards to try cases with.

Mr. *Law.*

1054. With regard to the last answer which you gave, do you think it less constitutional for the Chairman to revise the lists than for the sheriff, an officer of the Crown holding his office during pleasure, to put off jurors whom he thinks not fitted to try a case between the Crown and a subject?—I think I said nothing about putting off jurors.

1055. I understood you to say, just now, that you thought justice could not be properly administered in Ireland, unless in political cases the sheriff had the power of leaving off jurors who might be disposed to sympathise with a prisoner?—I would rather put it that he should have the power of selecting the best men; they are nearly convertible expressions; but there is a distinction between them.

1056. If it is objectionable, constitutionally, for the judge to select the jury in that way, but do you not think that it is also unconstitutional for an officer like the sheriff to have such a power of selection?—No, as chairman I am judge; and I do not think it is right for the judge to make the jury; the sheriff is the ministerial officer who supplies the jury to the judge.

1057. As I understand you, your chief desire is to have the system the same in Ireland as it is in England?—Yes; it has been the curse of the country to have different legislation on the same subject matter.

1058. Assuming the list to be revised by the magistrates in the way you suggest, by local knowledge being brought to bear upon it, would you be disposed to accept the provisions of the 49th Section of the English Act, under which the sheriff is bound to go through the whole body of the jurors?—Yes.

1059. If that he so, and if the sheriff exercises his power of selection, and thus takes all that you call the best men for the first cases, what is to become of him when he has to go through the rest of the book; he would have all the bad ones at last, would he not?—There are many men whom he would leave out in any case.

1060. Supposing the list to have been revised with the assistance of the local magistrates, would you be content to take the 49th Clause, requiring that the sheriff shall go through the whole body of jurors?—He must, in substance, go through the list.

Mr. *Law*—continued.

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1061. What do you mean by that in substance he must go through the list; may he leave out anybody he pleases?—He may say "this man is not fit to be summoned; I know his extreme poverty, and I will not summon him."

1062. He is, in fact, to revise the list after the magistrate has revised it, is he?—Yes, he is to say, "Notwithstanding this revision here is a man I know from ill health, or poverty, or something which I have heard since the revision, ought not to be on the list." For instance, such men as the judge discharges as soon as he sees them; we had 10 such at last assizes.

1063. Or on account of his politics?—No, I would say that politics should not be a cause of exclusion.

1064. I thought you implied in your answer to Mr. Plunket that justice could not be administered unless the sheriff had the power of selection for political reasons?—Politics should not be considered, but want of respectability should be considered.

1065. Do you not think it likely that the magistrates, who generally know their tenants and neighbours, are much more likely to know the means of each juror and his respectability than the sheriff?—I would first put them through the test.

1066. If you first put them through the most efficient test, is not that better than a capricious test afterwards?—Many things may arise between October and October; for instance, there may be sickness.

1067. But is there any sufficient reason for leaving the sheriff (who after all need not know the people at all, he being removable every year) the power of doing what is assumed to have been done by those who could do it best; is not that liable to misconstruction?—Everything is liable to misconstruction, but you must trust some one.

1068. But if you trust the magistrates, is it also necessary to trust the sheriff?—I think the sheriff should have that additional power.

1069. After you have purged the list by bringing the knowledge of the local magistrates to bear upon it, do you think it is a desirable thing in the present condition of Ireland to superadd the power to the sheriff to select the jury afterwards, as he pleases, in his private room?—I think we can trust the sheriff; we must trust somebody; everybody is liable to violate his trust; there was a case of a chairman himself being removed for misconduct.

1070. But if you have got the lists revised by the local magistrates, who know the people best, is it necessary to superadd the power of the sheriff to manipulate the list?—I will not adopt the word "manipulate."

1071. Then expunging the word "manipulate," let me say to select the list?—I would leave him the power of exclusion.

1072. Would that be regarded with general confidence in Ireland?—I think, of course, that a prisoner would not put confidence in anything of the kind, but the general law-loving public would like to see officials trusted, especially if they are trusted in England.

1073. As I understand the English Bill,

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Mr. *Law*—continued.

service upon juries must be distributed among the whole body of listed jurors, but you are not content with that?—Yes, I am content if it does not tie him up to the alphabetical system.

1074. But if everybody must come up for service in England after the revision has taken place, why would you not have that system in Ireland?—I would have it acted upon, but if the sheriff does not honestly do his duty it will soon be found out.

1075. But you would thus be giving the sheriff power in Ireland that you do not give in England, would you not?—I would be satisfied with the same clause in Ireland; I think the English sheriff under that clause would not think it outside his duty to leave out some men who were too poor or too ill, or have become bad characters since the last time; you might surely leave that to the Irish sheriff as well as to the English sheriff.

1076. How many disagreements did you have at the last assizes in Galway?—There were disagreements in three important cases, and there were two acquittals where there ought to have been convictions by the jury.

1077. Under the old system, have you ever had three disagreements at one assizes; in fact, have you not often had more than that?—No, I think not in important cases.

1078. How many disagreements had you at the last assizes?—We had three, and the other one which I have spoken about.

1079. Four altogether?—Yes.

1080. Have you ever had four disagreements in cases of any kind at the Galway assizes?—I do not remember that we had.

1081. Would you say that you had not?—No, but I do not believe that we had.

1082. We want to get at the facts; you took briefs in the civil cases, did you not?—Yes, I did so until I accepted the chairmanship; but I spoke of criminal cases only.

1083. In the sessions before last had you many disagreements at Wexford quarter sessions?—No, I had very few disagreements at those sessions; the right of challenge is never exercised.

1084. As a matter of fact there are not many disagreements there?—No, I do not remember more than two disagreements since I have been in Wexford, now more than 10 years.

1085. In fact, magistrates think your quarter sessions is a safer place to send prisoners to for trial than the assizes, do they not; there are no counsel to make long speeches, are there?—There are counsel occasionally and attorneys who make pretty long speeches.

Chairman.

1086. Have you noticed the 62nd clause of Mr. Lopes' Bill; is not that the clause which shows the power proposed to be given to the sheriff rather than the 49th clause?—I think the 62nd clause is supplementary to the other clause, which we have been reading, and that they should be read together.

1087. I gather that your objection to the present system is, that it compels the alphabetical order to be followed?—I cannot understand in human affairs the application of an inexorable mechanical test.

1088. You approve of the proposals in the English Bill on the ground that they enable the sheriff to get rid of all that alphabetical order, without giving him any real power of selection with room for improper motives?—Yes; just so.

Chairman—continued.

1089. You have suggested to the Committee that it would be well that the system of challenges in case of ordinary felony should be either greatly modified or abolished?—That is in cases of non-capital felony.

1090. Have you considered whether, if that were done, the power of the Crown to compel jurors to stand aside should also be modified?—I would leave a small margin; say, five, in ordinary felonies; but when you have 20 challenges, and do not cut down the right of the Crown to stand by, they may bid 100 stand by with regard to those 20; and so with regard to the five I would leave, in ordinary cases the Crown rights would be preserved in the same way.

1091. But, supposing you abolish altogether the power of challenge, would you still leave the same power to the Crown?—I certainly think that the Crown, in making the selection, never does it as it did in the olden times. The Crown only wishes to get the best jurors that they can. I think that the Crown might retain that power, even if this power of challenge were cut down. It is that right of 20 peremptory challenges by the prisoner that makes the jury system so hard to work in Ireland.

Dr. *Ball.*

1092. At present, in cases under the Whiteboys Act, there is no challenge allowed to the prisoner, but the Crown has the right of setting aside, has it not?—Yes; but the right is not often exercised.

1093. In all cases where there is no challenge by the prisoner the Crown has the right of setting aside, has it not?—Yes; there are no challenges there to give it foundation.

1094. Supposing there were no grand jury at the quarter sessions, as you seem to suggest, who is to decide whether the case should be properly tried or not. Should every case go to the Attorney General, do you think?—I think that it might be left to the fiat of the Attorney General or to the decision of the judge. The judge reads the information, and of course if he sees there is no case he says to the grand jury, "Do not find in that case." I think the information gives quite sufficient knowledge to the chairman to say whether a man shall be put on his trial or not. All that the grand jurors can do has been done thoroughly before it comes before them.

1095. That is to say in a case that arose some time before the court of quarter sessions the Attorney General should say, and if it arose immediately before the quarter sessions the Chairman himself should look at it?—Yes, the Chairman does read every information.

1096. Those cases you speak of were at Galway, were they not?—Yes.

1097. Has the town of Galway a separate jurisdiction and a separate sheriff from the county and separate jurors?—Yes.

1098. Were any of those cases which you have referred to tried in the town?—No, they were not; but I should say that in the town of Galway, at the last assizes, the trials were most satisfactory; there were four convictions, and one acquittal, which was a proper acquittal.

Mr.

Mr. *Law.*

1099. Is there a separate sheriff for Galway?—Yes.

Sir *Colman O'Loghlen.*

1100. Suppose the grand jurors are still preserved in England, would you abolish them in Ireland; would you make that distinction?—No; I would think it so essential to have the same laws in the two countries that I would be content even with that inconvenience, and to sail in the same boat with England.

1101. Are you aware that in London they have tried to abolish the grand jury system, but it has been resisted?—Yes, but I hope it will succeed.

Mr. *Verner.*

1102. Subsequently to the revision by the chairman or magistrates, some of the persons on the list may have emigrated or died, but at present the sheriff must summon them though he may be aware of the circumstance, must he not?—Yes, and that is one of the difficulties in keeping from him that discretionary power, when he knows that the persons are perhaps dead. In a matter of 1,600 names, that involves about 10 per cent.

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1103. He could not summon a man who was dead, could he?—He would be bound to send him a summons.

Chairman.

1104. Have you anything further to state to the Committee?—No, I think not.

Mr. Thomas De Moleyns, Q.C., called in; and Examined.

Mr. *Bruen.*

1105. You are a Queen's Counsel, are you not?—Yes.

1106. And chairman of the county Kilkenny?—Yes.

1107. And Crown Prosecutor for the county and city of Limerick?—Yes.

1108. You have had considerable experience, I believe, of the working of the jury system, both before and since the passing of Lord O'Hagan's Act?—Yes.

1109. You were examined last year before the Committee that sat to inquire into the question, were you not?—Yes; perhaps the Committee, before I go further, will allow me to state that I was examined before the Committee that sat last year, and that I then stated, generally, my approval of the principle of Lord O'Hagan's Act; the taking away the power of selection by the sheriff; but that, my experience of the working of the Act at the single assizes, which I had then attended at Limerick, was far from satisfactory with regard to the criminal business. I also added that I thought it was rather too soon on that occasion to form a conclusive opinion with regard to the Act itself, there having been a trial only of one assizes.

1110. Since then you have had experience of two other assizes, have you not?—Yes.

1111. Have you been confirmed in your opinion with regard to the working of the Juries Act, that it has not worked satisfactorily?—The qualification of jurors was raised from 20 *l.* to 30 *l.*, under the anticipation that, probably, it would work more satisfactorily. I may state that, the general appearance of the jurors was improved, and there was an absence of any of those occurrences which were laid hold of on former occasions to throw ridicule on the Act; but I think the difficulty of getting satisfactory verdicts in important cases has not been much diminished.

1112. I suppose that is owing to the fact that the juries have not displayed that independence which they ought to have displayed?—I think the object which we must all be anxious to obtain is capable and intelligent, and independent juries; in many respects, the present class of jurors are deficient in those important qualities. I think the great defect of the present system consists in the uniformity of the class from which they are taken; there is a want of variety in the qualification; in fact, the great mass of jurors are now taken from the occupying farmers. Now, as the country people have all the same habits, the same modes of thought, and move I may say in the same groove, there is a difficulty in that respect whenever a critical or a difficult case comes on; I have a copy of the panel at the last Limerick assizes, which, I think, illustrates that in a remarkable way. On reference to Mr. Justice Fitzgerald's evidence before the former Committee, I find he stated that at the spring assizes of 1873, where there were 143 jurors on the panel, half of them were described as being esquires, gentlemen, shopkeepers, and so on, and the remaining half farmers; at the summer assizes of 1873, there were about the same number, 145, there were then only 12 of the class I have alluded to; that is to say, shopkeepers, gentlemen, and esquires; at the last assizes, the disproportion has rather increased; I find there 146 jurors, and out of that number I think there is only one person described as a gentleman, one as an hotel keeper, two as shopkeepers, and two as farmers and shopkeepers, making altogether six or seven; the whole of the remainder are farmers; now, I think it is very desirable to leaven that mass, to have persons with different modes of thought, and not to have the whole panel derived from that one class, with the same habits and ways of thinking, and perhaps I may add, with those prejudices of caste and class which we are all liable to.

Mr. *Bruen*—continued.

Mr. *De Moleyns*, Q.C.

1113. That panel was the result of the alphabetical process of selection, I suppose?—Yes, no doubt, taken in proper dictionary order; but as I have stated, the result is that 140 of them are farmers, and six described as shopkeepers and farmers, including one "gentleman." I need not say that when some are ordered to stand aside, and some are challenged, the residuum consists entirely of one class. I would not be understood to say that I should desire to exclude farmers as a class, but it would be very desirable to educate them, by an admixture of a few other persons who might guide them to some extent in their duties.

1114. You would like to see by some process the panels formed to represent all classes, more than they do at present?—Yes; I must add, however, that there is a great difficulty in getting those different classes. The only additions I could suggest would I am afraid result in only a very limited number. I would first of all give this franchise to graduates; that is to say, any

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persons who have taken degrees; that might admit a few persons, the sons of resident gentlemen, who are not rated occupiers. I would also give to what is called electoral property this franchise, that is to say, 50 *l.* and 20 *l.* freeholders and leaseholders, and those who appear under the head of "immediate lessors" in the poor rate books; also I would admit those who are now made special jurors under particular circumstances, that is to say, sons of peers, and baronets, knights, and magistrates. I would take them irrespective altogether of any rateable qualification; from their intelligence and position, they would become useful jurors. I may say that I speak now with regard to two counties; that is to say, the county of Limerick and the county of Kilkenny. I think that an increase of qualification ought still to be resorted to with reference to those counties. I am quite aware that with regard to many counties in Ireland, no increase of qualification could be admitted from the limited number of jurors; but as to Limerick and Kilkenny, I think the qualification might be increased to 50 *l.* I have calculated the number that would be left in Limerick, and I find that it would be between 1,300 and 1,400, irrespective of any assistance that might be obtained from the classes that I have mentioned. In Kilkenny it would still leave over 1,000. I have the sub-sheriff's authority to say that he thinks that number would be sufficient.

1115. Have you any idea what number would be added by those special qualifications which you have named?—Not very many, I fear; perhaps 80 or 100 might be added at the outside; with regard to Limerick, it is a difficult question on account of the way in which the criminal business has to some extent miscarried there; Limerick is one of those purely agricultural counties, or rather pasture counties, with large holdings, but with very few large towns, showing in my opinion the importance of endeavouring to mix up as far as possible what I may call the household qualification with the mere farming element. The largest town in Limerick is Newcastle, which, I think, contains 2,350 people. It is very remarkable that Limerick, so large a county, has fewer of those household franchises than any other county in Ireland except three. It has only 60 tenements that are valued at 12 *l.* in the "towns and villages."

Chairman.

1116. What does a 12 *l.* valuation represent?—In Class 1, the qualification is 30 *l.* for a rated occupier, and 12 *l.* for lands, tenements, and hereditaments within towns or villages; that practically represents houses in towns and villages; what I wish to convey to the Committee is this, that with regard to Limerick, where I think the juries are not favourably circumstanced, there are fewer of that class in consequence of the towns being so small, and there being so few jurors with that particular household qualification. I may add this also with reference to Limerick, that it labours under this difficulty; that all the larger class of shopkeepers and merchants gravitate towards the city from the country parts as a common centre, and those jurors form a class apart; they are confined to the trials that arise in the city, and they are therefore withdrawn from the general county panel; the result is that in Limerick the jurors are especially of the agricultural and the farming class, with very little admixture.

Mr. *Bruen*.

1117. You do not mean to suggest that the qualification of 12 *l.* in cities, towns, or villages, should be reduced, do you?—No, my idea was this, whether practicable or not, I do not know, but that the class of jurors within what are called those counties of cities, and counties of towns, besides their proper duties of serving as jurors within those limits, should also be put on the general county book so far as service at the assizes only is concerned. At present they have a very limited duty to perform, and at no cost, as they are never summoned out of their town. If they were put on the general jurors' book in ordinary alphabetical order, so as to take their turn for the county business at the assizes, which would only be tried in the town in which they lived, that would admit 330 of the most capable and best jurors into the general county panel. It would involve no additional expense, but I merely suggest that they should take their turn at the assizes, on the county civil and criminal business.

Sir *Colman O'Loghlen*.

1118. You do not apply that to Dublin of course, do you?—No, not to Dublin.

Mr. *Bruen*.

1119. They would have to do double duty then, would they not?—Their duty now is comparatively very small; there is very little criminal business in the county of a town, or county of a city; in Limerick or Kilkenny there is very little business at the assizes; besides they are never called upon to incur expense, as other jurors are, because they never leave the county town.

Mr. *Law*.

1120. The assizes are held in their own town?—Yes, the assizes are held in their own town; it is merely the additional labour as their turn arises on the county panel.

Mr. *Bruen*.

1121. Have you considered the question of revising the jury lists, and has your opinion altered with regard to the proper court for revising the lists?—My opinion has altered; I once thought that the chairman of the county might be a good court for the purpose of revision; but now my opinion is changed; I should couple this with the fact, that I am still equally opposed to any power being given to the sheriff, whether an absolute power of selection, or a modified power of selection, which would be in many respects more objectionable in practice; but I think that with regard to the revision of the list, in the first instance, the proper persons would be the magistrates at petty sessions in their own districts; they failed, I believe, formerly because they were confined to quarter sessions town, and it then became a matter of form; there were few well recognised qualifications, and in fact there was no close revision; at the petty sessions, with their knowledge of all the different persons within the district, I think they might with advantage revise the lists, subject to a power of appeal to the chairman, or rather, that any name they struck out might be brought to the chairman's notice, by way of appeal; perhaps an asterisk might be put against any name struck off, and then the chairman might examine at the next sessions whether there were good grounds for striking it off. What I propose is, that the magistrates should now examine into the matter

Mr. *Bruen*—continued.

matter within their own districts where they know the habits of the different persons, and would feel that this responsibility was distinctly thrown upon them.

1122. Do you suppose that by the present mode of revision a great many persons are left on the list improperly?—There is no doubt about it. At the last Limerick assizes the number of old, infirm men who came up was very striking, and it elicited the remark, that it would almost appear that the poor rate collectors had summoned the men over 60, instead of under 60. Judge Barry sent for the grand jury to complain of the system to them, and to beg that they would stop, if possible, any remuneration they intended to give to the poor-rate collectors. The grand jury said that they regretted it very much, but that they had passed the presentment, and it was too late; in fact, the old men of the county seemed to come up in greater numbers than the younger ones.

1123. In the last two assizes at Limerick, have you had difficulty in obtaining verdicts in serious cases?—What I am about to state now is the result of the observation of a disinterested person who has only one object in view, namely, to secure a good jury system. It is more the observation of various trials than the selection of any particular instances. If I was to go into detail, I might name them. In one case there was a very improper acquittal; in others disagreements, and in clear cases; but it is of course an invidious thing to go into details. It is a very hard question to answer; but I think there is a difficulty, and I have felt the difficulty in critical cases in obtaining what I call fair and proper verdicts, I will not say convictions; for I need not say that the object of the Crown is not to secure a conviction, but to get what they think proper verdicts.

1124. That being your opinion, to what do you think that result is owing?—I think in capital cases it is frequently from want of intelligence on the part of the jurors, or rather educated intelligence, and want of capacity to follow circumstantial evidence, and trains of reasoning, and also to want of courage, and of sense of responsibility, perhaps, in acting on their own judgment in capital and important cases. In other cases also, I think they are exposed to solicitations from the friends of the parties on trial. Perhaps there is a feeling that they are one class, with strong sympathies with the persons who generally commit those aggravated assaults, and are engaged in faction fights.

1125. Do you think that intimidation has had anything to do with proper verdicts not being given?—Intimidation, in a certain sense, perhaps; that is to say, the anxiety to avoid responsibility; they wish to avoid the consequences (not unnaturally) of the conviction of the sons of friends and neighbours; they are exposed to injuries in different ways, which we can hardly appreciate. That, I think, does produce very frequently disagreements, rather than acquittals.

1126. Are those the causes which you think have led to that result which you state you are not satisfied with, that is to say, the results of the serious trials at the last two assizes?—Yes, it is a general feeling which it is easy to convey but difficult to define. It is very difficult to go into details in such cases.

1127. There was a question put to you when you were examined before the Committee of last

Mr. *Bruen*—continued.

year, a portion of which I will read to you. You were asked: "Have you formed an opinion as to the principle of the Act?" and your reply was: "I must say that I think that the Act is quite correct in principle, and in its conception. The principle appears to me to be to endeavour to secure fair, and what the law calls—though, perhaps upon this occasion, it is not a very happy term—indifferent jurors, by extending the class, and by extending the area from which they are to be taken; and a second principle which is strongly kept in view throughout the Act, that the jurors that have once served should not be called upon again within a very long period to repeat their services. I think, however, that there is another, and an equally important, consideration to be kept in view; that the jurors should be capable, should be intelligent, should be, to some extent at all events, removed beyond the probable rank of the usual classes of offenders, and also, above all, should be free from the chance of intimidation, and, perhaps, what is more to be feared, solicitations on the part of the friends of the prisoners." Do you adhere to that opinion?—I adhere to every word of it.

1128. Do you think your experience during the last two assizes has not shown that that result has not been produced by the machinery of the Juries Act?—I am afraid not yet. With that view I recommended last year that the qualification should be raised to 30 *l.*, and with that view I now propose that it should be raised, at all events in Limerick, to 50 *l.*

1129. Do you think that that would produce the event you hope for?—I will not answer for that; because I have already stated that I think the great defect of the present working of the Act is uniformity of qualification. Go as high as you please, up to a certain point, you still have the same groove of thought and the same class of people acting together as jurors. I wish to diversify them if possible by another class. I should also add that I would suggest that in criminal cases the juries should be ballotted for as they are now in civil cases. I think that would go some way to get rid of solicitation on the part of the prisoner's friends. But there is one more suggestion which I should certainly press very much upon the Committee, that is to say, that the challenge to the array for any departure by the sheriff from what is called dictionary order should be abolished; that except for partiality or "unindifferency" on the part of the sheriff, no challenge of the array should be allowed. Very injurious effects arise from those challenges, and any departure from the alphabetical order could be easily remedied at the assizes.

1130. You have with you a list of the panel at the last assizes?—Yes.

1131. And you have stated that there were only five or six on the panel of what you would call the better classes?—I would not perhaps use the word better class. I merely mean that there was only one juror marked as "gentleman," and one as an hotel keeper, who was absent from the county.

1132. Have you perceived any want of attendance on the part of those classes?—They were not on the panel.

1133. So that there is no fault to be found with the results of the assizes owing to their non-attendance?—No, certainly not; I think the new class of jurors invariably attend, and it is greatly

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to their credit that they do so. I would also press strongly upon the Committee that with the view of securing a larger attendance of jurors with as little waste of power as possible, fining should be resorted to in the first instance, if they did not answer to their names in the same way as the grand jurors are called at the beginning of the assizes, so that the panel should be called, and that irrespectively of the judge a fine should be recorded against each person not answering, subject to a power of appeal either at the assizes or the subsequent court of quarter sessions, in case of good reason being shown for non-attendance; I think that the numbers who do attend but who do not answer to their names are very great.

1134. Have you any other suggestion to make to the Committee with regard to the amendment of the law?—No, not at present.

Mr. *Verner*.

1135. With regard to those young gentlemen who you propose should be introduced as jurors, how would you get hold of them?—I think that the clerks of unions know thoroughly everybody who resides in their district; of course there might be some little difficulty in it; I merely suggested that.

1136. How could you possibly fine those persons for non-attendance?—They must be put on the juror's book in the first instance, and then of course they could be fined; I suppose your difficulty would be as to how the fine could be enforced; there possibly may be that difficulty, but it occurred to me that persons who had gone through that test of education might fairly be admitted to serve on juries.

The O'Donoghue.

1137. I understood you to say, in answer to Mr. Bruen, that juries in some cases failed through timidity?—Of course there is no actual test of timidity, you can only form an opinion. When asked for an opinion, it is very difficult, strictly, to analyse the reasons for it off-hand in a case of this description.

1138. I suppose that no amount of revision will get rid of that difficulty?—Yes; in the first place I recommend a higher qualification.

1139. You are favourable to the suggestion that the revision should take place before the magistrates in petty sessions, if I rightly understand your evidence?—Yes; no power of selection being afterwards given to the sub-sheriff.

1140. I suppose it would be generally known in the district that the sessions were going to be held?—Certainly, full notice would be given of it; a notice to all persons to attend if they thought proper.

1141. Supposing a magistrate was going to object, how would he proceed?—I should very much like to follow the section in the English Act; I believe it is Mr. Lopes' Act; I would repose confidence in the magistrates who perform very important duties now, both civil and criminal, and I think they might very fairly be trusted; you might add the words "or who for any other cause ought in their opinion to be omitted," and give a power of appeal. If the magistrates knew that a person was an habitual drunkard, or that his circumstances were very poor, they might leave him out, and in fact there are many causes that might be suggested. The magistrates might say, "this person would be a bad juror," and his name might be marked with an

The O'Donoghue—continued.

asterisk or something of that kind, and the case might be brought before the chairman by way of appeal.

1142. The juror objected to would have a power of appeal to the chairman?—Yes; he would have a power of appeal to the chairman or anybody on his behalf, in fact I would almost go further than that. Even with the most satisfactory magistrates, I think every person should have an appeal from their judgment; I think it would be very fair that the list of persons eliminated by the magistrates should be brought before the chairman, and that he should ask if any person had an objection to any rulings made at the petty sessions.

1143. The revision of the lists of jurors is a very important matter, is it not?—Yes, and, therefore, I suggest that it should be carried out within a limited area by persons who must necessarily know the circumstances and habits, and the fitness of the persons in their judgment to act as jurors.

1144. You would not propose to empower the magistrates to strike a man's name off the list without stating the reason, would you?—No, certainly not; it is a discretion to be exercised in open court. I am quite sure that the magistrates would not be afraid to exercise that power, nor would they exercise it improperly.

Sir *Colman O'Loghlen*.

1145. As I understand you with regard to the formation of the list, you agree with some of the evidence already before us that you would have the first revisal take place at the petty sessions of the district?—Yes.

1146. Then the list would not be perfect until it was signed by the chairman, in order to give any person who was struck off an opportunity of appealing?—Yes; every person's name as it was struck off should be marked in order to draw the attention of the chairman to it.

1147. A quasi appeal without costs, in fact?—Yes.

1148. You spoke of the great want of a mixture of classes in the juries in Limerick?—Yes.

1149. You have stated that Limerick is a very agricultural county, with very few persons in it who are not agriculturists?—Yes, and no large towns except Limerick.

1150. Is it not the fact, when magistrates have been put on the jury, that the Crown have called for large fines on them to make them attend?—I would not say the magistrates.

1151. Was not a panel called expressly for the purpose of fining the magistrates who did not attend?—I do not think that there were more than one or two magistrates on the panel.

1152. There were 10 on the panel, and none of them answered to their names, was not that so?—I have not seen the panel, but I distinctly recollect the fact that what are called the upper classes did not attend; their non-attendance was commented on by the judge, and they were fined, and they subsequently came in, and the fines were remitted on statements made by them.

1153. With regard to capital cases you have been for a long time Crown prosecutor in Limerick, have you not?—Yes.

1154. In your experience before the new Act was passed, was there not great difficulty in obtaining conviction in capital cases?—Yes, there necessarily and naturally is great difficulty in obtaining convictions in capital cases, but the comments

Sir *Colman O'Loghlen*—continued.

ments which the judges make must of course be taken in connection with the clearness of the case; when I think there is a case so clear, that in my judgment, as a reasonable man, there ought to be no doubt, I am justified in commenting upon it.

1155. Is it not the fact that, in consequence of the difficulty of obtaining convictions in capital cases, indictments for manslaughter and non-capital crimes are often sent up in cases which, in point of law, would amount to murder?—Yes.

1156. There was one case which you mentioned, which was tried a year or two ago, in which there was a verdict which surprised people?—Yes.

1157. Now on the last assize at Limerick, there was a stabbing case, on which the judge commented, was there not?—Yes, a case of homicide. That was a case of manslaughter on which the jury returned a verdict of acquittal (I do not like to go more particularly into the case), and the judge commented very strongly on the acquittal, and stated that he was happy to say the verdict was their verdict, and not his verdict. That is one of the cases which led me to form the opinion I have expressed.

1158. Is it the case within your knowledge, that the system of canvassing jurors has become rife in Limerick?—Not to my knowledge, but to my belief, from what I have heard.

1159. Would it be advisable to make that a misdemeanour, do you think?—That might be difficult to carry out.

1160. Now with regard to the difficulty you have mentioned, about challenging the array arising from the mistake of the sheriff, you consider that those challenges should be abolished, do you not?—In a capital case which is still pending in the City of Limerick, there were three successive challenges taken to the array for a departure by the sheriff, clearly an unintentional departure, from the provisions of the 19th section of the Act; one of those challenges was allowed by the judge; in another case, though the judge ruled formally for the Crown, his opinion was that it was a good challenge; the judge who so ruled told me he thought it would be very desirable that some legislation should as soon as possible be introduced with a view of taking away all challenges to the array, wherever a departure from the order was unintentional on the part of the sheriff, so that the sheriff might retire and settle the panel in the order in which it ought to be. Some of the judges hold that the Act of Parliament in that respect is merely directory, and that a departure from it is not a subject of challenge; but one of the judges held the reverse, and so decided as I have already stated. I may add also that if this order of taking the names is to be mechanical, allowance must be made for occasional derangements of machinery.

1161. You are of opinion, I think I understood you to say, that the jurors ought to be taken by ballot from the panel returned by the sheriff?—Yes, that he should return them in dictionary order, and then, that instead of giving the friends of the person an opportunity of seeing the precise order in which the different jurors stand, and in which they would be called, I think it is better that the names should be taken by ballot, so that they could not calculate beforehand anything about the order of the jurors.

1162. One more question; you have had some

Sir *Colman O'Loghlen*—continued.

experience of criminal trials, are you of opinion that the present system should be continued, of giving in capital cases 20 challenges?—I would not venture to give any opinion on that, but any special legislation for Ireland would be objectionable, I think.

Mr. *Law.*

1163. Would you concur in the suggestion which has been made of doing away with the grand juries at the quarter sessions?—That is a very large question. I do not think, practically, perhaps, that the grand jurors are of very much use, but still I see great difficulties if they were done away with at quarter sessions, where very important cases are tried. Then there is the question whether they should be retained at assizes? If they are done away with at the assizes in Ireland why do we propose to keep them up in England. However, that is too large a subject for me to give an opinion about now.

1164. Do you approve of the clause in the English Bill, Clause 79, giving the court, which of course includes the assizes, the power "to order a view" in any case?—Yes, I approve of that in criminal cases.

1165. That is a very desirable provision, is it not?—Yes, that is very desirable.

Sir *Colman O'Loghlen.*

1166. There was a peculiar criminal case at the last Limerick Assizes, was there not, in which an order to view the premises would have been of great importance?—Yes.

Mr. *Law.*

1167. There has been, I believe, a difference of opinion among the judges with regard to challenges to the array on the ground of technical irregularities by the sheriff; for instance, Judge Fitzgerald held that a challenge lay in one case, and Judge Lawson held the contrary?—Yes, there is a difference of opinion which it is desirable should be removed.

1168. Now, with regard to the panels in Limerick and Kilkenny, your proposition is, that the jurors who are summoned for the trial of cases in a county of a city should also serve as jurors at the assizes for the county, is it not?—Yes, my proposition is, that they should be put on the general county panel in proper alphabetical order and be called upon to serve at the assizes, which of course would be held at the town in which they live.

1169. That is to say, in addition to their other duties?—Yes, in addition.

1170. Would it not be simpler still to have one amalgamated panel for the county and city, and to take them for both purposes in regular order?—I thought of that, but it is a very large field. These local jurisdictions are very anxious to retain their own privileges. I would let them retain them, only suggesting that the jurors within a county of a city should not be exempt from service on the county trials in the town.

1171. But if there was one panel for both, and if service on either was to count in order of rotation, would not that answer the purpose?—I think it would answer the purpose; that was my first idea, but I thought that perhaps it was too large a plan; in those particular counties which contain these cities within them, the other towns are usually so small that the number of persons coming within the 12 *l.* qualification is proportionately

Mr. *De Moleyns*, Q.C.

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Mr. *Law*—continued.

small; I think Kilkenny has almost the smallest number of houses of any county in Ireland for the 12 *l.* qualification.

1172. Would you not propose to add to the list of qualified jurors, retired officers in the army and navy?—Yes, I think that any of those classes would be very desirable additions, and I believe that they could be easily got at because the poor law guardians and some of the small local authorities know everybody and the circumstances of everybody residing within their limits.

Marquis of *Hartington*.

1173. I understand you to adopt some of the clauses in the English Bill; is that so with regard to the revision by the magistrates?—Yes, I would adopt that clause, with one exception; I think that the words "or upon their own knowledge" are objectionable.

1174. You would propose to leave that out, would you?—Yes, I would propose to leave that out.

1174.* The clause reads thus: "It shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries, to strike his name out of such list?—Yes.

1175. You would propose to leave out the words, "or upon their own knowledge"?—Yes, I think they would obtain evidence from their own process servers, the poor law collectors, and other persons who attended, or might be made to attend, with regard to any facts as to people who in their judgment would be unfit to serve, such as habitual drunkards, and persons in poor circumstances, &c.

1176. You would limit the want of qualification strictly to the want of legal qualification, I suppose?—No, I would not; I would leave the words as they are in the English Act in that particular.

1177. Would that leave it open to the magistrates, on being convinced that a certain juror was a person of bad character, to strike his name off?—Of course, if in their judgment a man was "unfit" to be on the jury list, it would be open to them to strike the name off; but it would then be inquired into before another tribunal on appeal; if you specify particular instances beforehand you get within too rigid a limit, and destroy the usefulness of the preliminary investigation.

1178. You would make it incumbent on the justices, would you not, to state on what ground they expunged the name?—Yes, they would do it in open court, but I do not think that you need limit them too closely; in fact I would give this ample power at the preliminary tribunal, in order to avoid the objectionable principle of giving it to an irresponsible party afterwards in private; any jurisdiction in public in sifting cases in the first instance is better than returning to the system of giving the sheriff a subsequent discretionary power of elimination.

1179. As a matter of your own opinion, do you think that a man who is believed by the magistrates to be a member of Fenian or Ribbon societies, ought to be excluded from the list?—Yes, most certainly, if it could be arrived at.

1180. But if you strike out those words, "or upon their own knowledge," do you not make it very difficult for the magistrates to get at the knowledge?—No, I think the constabulary generally can prove it or know it.

Marquis of *Hartington*—continued.

1181. The constabulary could hardly, in the manner required by this clause, inform the justices upon the commission by oath or affirmation, could they, that a certain person was a member of a Fenian or Ribbon society?—It is a choice of evils, and I think the lesser evil would be even to suffer that person to remain on the list rather than let the magistrates act upon their own suspicion, because they could have no positive knowledge of the fact. I might add that the power of the Crown to order such persons to stand aside would be very properly exercised then without giving any reason. The Crown officials would know perfectly well whether a man is a member of a Fenian or Ribbon society, though it could not be proved.

1182. As I understand your evidence your opinion is that you would not trust to any revision in this matter or intrust to any person a power of selection, which would enable him absolutely to exclude from the panel persons who might belong to a Fenian or Ribbon society?—If they belonged to a secret society, and it could be proved, I certainly would; not upon a suspicion only.

1183. Is it not the case that it is frequently well known in Ireland that So-and-So is a Ribbonman though it cannot be proved?—I am afraid that it is.

1184. I understand you to say that you would not attempt to exclude persons from the list of jurors, and subsequently from the panel in those cases. Now if you give up the power of selection you give up the power of excluding certain names from the panel, do you not?—It is a dilemma, no doubt.

1185. But on the whole you would trust to the power of the Crown to order jurors to stand aside, I suppose?—Yes, I would trust to the power of the Crown to order them to stand aside. I do not concur in a great deal of the evidence with reference to the invidiousness of the Crown solicitor doing that, or to the effect produced in court by it. It is done openly in court by the proper person, and does not excite the same odium as the exercise of the power by an irresponsible authority in private would do.

Chairman.

1186. Do you see any reason why the magistrates in Ireland should not be trusted to act upon their own knowledge as well as the magistrates in England?—Are they trusted to act upon their own knowledge in England? It has not become law yet; I think it is only a clause in the English Juries Bill as now proposed.

1187. Quite so; but supposing that to be the law for England, might it not be argued that it should be the law for Ireland?—I would rather not give an opinion with reference to that matter. However, it is not the law yet.

1188. Your objection, then, is rather to the proposal considered as for either country than to the proposal considered as specially for Ireland?—Certainly, for either country. It is a difficult task to throw on the magistrates in either country, and one which certainly would expose them to odium.

Dr. *Ball*.

1189. At the adjourned assizes for the City of Limerick last time, there was an important case for

Dr. *Ball*—continued.

for murder; however, the trial did not take place, and the explanation given to me is that the jury could not be obtained. As you were the prosecutor, perhaps you will tell me whether that was the case?—The panel was called through, and a given number were challenged, and others ordered to stand aside. I think 24 were examined on challenges for "unindifference;" they were examined and cross-examined on oath by the judge; it was a very remarkable circumstance that they all swore positively that having been in court at the previous trial, when the jury had disagreed, and having read and heard all that had passed, they were unable to bring their minds to a fair conclusion, or give a fair trial to the prisoner, and the trial was necessarily postponed.

1190. In effect, that arose from the panel being very limited, and confined to one place, did it not?—Yes, it was out of a limited area.

1191. That could not have arisen, if it had been the whole of the county panel, could it?—No. In that case, what has been suggested by Mr. Law would have been the remedy, namely, to make the jurors of the two jurisdictions reciprocate their services; that is to say, the city jurors should serve in the county trials at the assize town, and the county jurors should serve in their proper turn in the city cases, being included in one common panel.

1192. Having, say one sheriff for the city and the county, and having one criminal jurisdiction, would not affect any municipal rights or privileges, would it?—No; I would carefully preserve them.

1193. In Belfast it is so, is it not; but the town of Belfast has a municipal system separate from the county?—Yes, Belfast and Londonderry are both cases in point; at all events Londonderry is so; they have separate quarter sessions, and yet those jurors, who are probably some of the best in the county, educate the others, which is a very desirable thing to do.

Mr. *Downing.*

1194. I understood you to say that the fact of a number of old persons having been summoned in one case at the Limerick assizes, was caused by neglect of duty on the part of the subordinates?—Yes.

1195. If they had complied with the different sections of the Act of Parliament, those persons could not have been on the jury list at all, could they?—Certainly not; that is a fact peculiarly within the knowledge of the persons intrusted with that duty.

1196. You spoke of a case of acquittal which caused some surprise; that is not the first time, I suppose, that a verdict has surprised you a good deal?—No, by no means; but no acquittal ever surprised me so much as that, or, I believe, every person that heard it.

1197. I suppose that you are aware that even in England there have been acquittals that have caused a good deal of surprise?—Yes.

1198. That must be always the case in criminal judicature, must it not?—Yes, and also in capital cases more than in others.

1199. Now with regard to the revision, you quite concur with Mr. Fergusson, the chairman of the West Riding of the county of Cork, who gave his opinion decidedly against the words that you speak against; that is to say, you would not

Mr. *Downing*—continued.

give to the magistrate of his own knowledge the right to displace names from the list?—Just so; I concur in that evidence; I think that it is an invidious duty to cast on the magistrate; at the same time, I am most anxious that there should be as complete a sifting and winnowing, in the first instance, of the list of jurors as possible by those who are most likely to know their habits and deficiencies.

1200. Now, under the words of the 19th section, it is quite clear that the qualification must be prescribed, to enable the magistrates to act under the section, because it says, "it shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries," and so on; there must be a qualification of course, defined, before the magistrate can say whether a man is qualified or not?—"Or in other respects unfit." I think it runs so in the Bill now before the House of Commons for England. "It shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries." It is that question of unfituess that I would leave as largely as possible without restriction within too narrow limits.

1201. But you would only propose to give that power under an investigation on oath, would you?—Yes, on oath; that is to say, supposing a man was in very bad circumstances, it could easily be proved on the oath of the poor rate collector; or if he was an habitual drunkard, &c.

1202. You would perhaps consider it really not only an unpleasant, but perhaps a dangerous thing to inquire in a public court, into a man's politics, or as to a man's being a member of a secret society?—Yes; I think there is great difficulty about that, though it would be desirable if it could be done.

1203. When you are prosecuting at the assizes you derive your information through the Crown Solicitor and the constabulary, do you not?—Yes.

1204. And the Crown Solicitor obtains his information from the constabulary?—Yes.

1205. Is the Crown Solicitor very well informed, generally, with regard to whether the parties on the panel are supposed to be members or not of illegal societies?—Yes.

1206. And he communicates with you to that effect, I suppose?—Yes.

1207. And you have unlimited power of ordering them to stand by, have you not?—Yes.

1208. That would meet all the difficulties in that respect, would it not?—Yes, so I think; it would counterbalance any advantages from such an inquiry, at the petty sessions, by the magistrates.

1209. Now with reference to raising the qualification in the county of Limerick to 50 *l.*; have you at all considered how that would reduce the panel for the county?—Yes.

1210. You know, do you not, that in Limerick the number was 3,846 previous to the passing of the amended Act?—Yes.

1211. By the amended Act 1,243 were struck off?—Yes.

1212. By

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Mr. *Downing*—continued.

1212. By raising the qualification to 40 *l.*, 715 would he struck off?—Yes.

1213. And 259 hy raising the qualification to 50 *l.*?—Yes.

1214. Therefore you would reduce the numher to much less than the moiety, would you not?—To 1,300, about which I think would be quite sufficient for the county wants, if you adopt also my other propositions, that is to say, that the attendance of all the jurors on the panel should be enforced by compulsory fines, registered in the first instance, so that all parties should he compelled to attend and answer; you might in that case have smaller panels. Also I would endeavour to supplement the panel from other classes in the way I have stated. But, at all events, the first object is to have capable, independent, and intelligent jurors, no matter at what trouble or how often they may be called upon to serve.

1215. The amount of a man's rating does not prove that he is more intelligent than others, does it?—No, not necessarily.

1216. You will not admit that Englishmen are more intelligent than Irishmen, will you?—Those are speculative questions; they have each their good qualities.

1217. The Bill now before the House of Commons for England would confer an obligation on a man in England rated at 25 *l.* to he summoned on the panel to serve as a juror. Now, if a man rated at 25 *l.* in England is a fit and competent person to serve on a jury, why do you think that he should not be a fit and competent person to serve in Ireland under the same circumstances?—I must answer partly from the present state of their intelligence (I am not called upon to speak, I think, with regard to the English Bill), and partly also from other circumstances; I think there is a feeling in Ireland which is not exactly in accordance with the due administration of the law; we all regret it, hut it is the fact, and I hope that one result of the present Act will be to remove it in time. All I wish is that during the period of transition the due administration of the law, which is the first question, should be secured; you may perhaps lower the qualification by and bye when you have educated the people to these duties.

1218. You said, I believe, that Limerick is an exceptional county?—Yes; there are very few towns of any size in it, and the number of persons who come under the 12 *l.* household qualification is remarkably small.

1219. Under Lord O'Hagan's Act, the rated qualification for jurors living in towns is 12 *l.*?—Yes.

1220. Do you think that it would be useful to reduce that valuation, as people living in towns are generally more intelligent than those living in the country?—Yes, to reduce it to 10 *l.* would he safe, in my opinion.

1221. Would it not be safe to reduce it to 8 *l.*?—Perhaps, I am hardly a good judge as to that.

1222. You are aware that a valuation of 8 *l.* is generally equal to a valuation of 12 *l.*?—Yes; it is generally agreed that an admixture of the household qualification would be desirahle, and I should wish to go as low as would he safe in order to secure that.

Mr. *Bruen*.

1223. You were examined hy Sir Colman O'Loghlen about a case in which the panel was called over hy the judge for the purpose of having certain persons fined for non-attendance?—Yes.

Mr. *Bruen*—continued.

1224. They were fined, but on stating the cause of their non-attendance the fines were remitted?—Yes.

1225. I suppose we may consider that the excuses were valid, may we not?—Judges are very soft-hearted, and it is to guard against that that I recommend the system of calling over the names. In Mr. Lopes' Bill there are three or four sections particularly devoted to that; that is to say, to having fines imposed on the jurors, and I think also there are sections providing for the speedy estreating or levying of the fines, because it is the conviction that fines are seldom imposed, and still more seldom levied, that leads so many jurors of the better class to speculate on the chances of getting off.

1226. Are you prepared to say that the cause of non-attendance in that particular case which you have referred to was such as not to warrant the judge in remitting the fines?—That is a matter for his consideration; I think he was as soft-hearted as I am myself; when I act as judge I very often remit fines, but I very frequently impose them if thoroughly convinced of the necessity of doing it, and leave them to he levied.

1227. You have stated that the canvassing of jurors is becoming a practice?—I have been told so, and it is quite within the bounds of probability that it may be so from the way in which the panel is now prepared, and called on criminal trials.

1228. How long is it since you have heard that the canvassing of jurors has become a practice?—I think it was so at all times, more or less; it is a natural feeling on the part of the friends of the prisoner, and they are not impressed with any sense of impropriety in doing so. I must qualify my answer to this extent; I mean at all times as far as the jurors on the panel come within their sphere; now, of course, from the greater number of such jurors the practice is becoming more prevalent; there were only 70 farmers on the panel two years back, and there would therefore be a much smaller number of persons who could be canvassed than there would be if there were 140 farmers and neighbours, as there were on the last panel.

1229. You have stated your opinion that a challenge to the array should not lie on account of unintentional departure from the alphabetical order by the sub-sheriff?—Yes.

1230. How would you prove intention?—That is a matter of some difficulty, like the word "wilful;" it has to be determined by the judge. I may add that there was a recommendation as to an amendment of the law made by the judge, who ruled in favour of the challenge. I think some short special legislation is called for before the next assizes, otherwise very great confusion may arise. The suggestion was that in a case of what may be called unintentional departure from the provisions of the Act the judge should have power to order the sheriff to attend, and to amend the panel so as to make it consistent with the provisions of the 19th section, reserving to the judge the power of fining the sheriff in case of any intentional or wilful departure on his part from the proper order prescribed by the Act.

Mr. CHARLES GRANBY BURKE, called in; and Examined.

Mr. *C. G. Burke.*

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Dr. *Ball.*

1231. YOU are a Master of the Court of Common Pleas in Dublin, are you not?—Yes.

1232. I believe that undefended cases, in which damages have to be assessed, come before you?—Yes, a third of them come before me.

1233. Have you the assistance of a jury in assessing the damages?—Yes.

1234. What number of jurors have you on your juries?—In all cases the number is six; that is fixed by statute; that number was considered sufficient in the year 1853, under what was called Whiteside's Act; and it was considered by the then Mr. Whiteside, and two or three other jurists; I, myself, being Master at the time, was called into the conference, and we concluded that it would be a great improvement to have a smaller number of jurors in civil cases, and that this was a mode of trying the question that would not excite the public attention so much as in the larger jurisdiction.

1235. Have you found that the system has worked well?—Yes, it has worked extremely well. Since the year 1853, though the parties have been in a position to be asked upon more than one occasion for a larger jury where there were cases of some nicety. I never knew the parties to wish for a jury exceeding six.

1236. Is there a power in the Court to give a larger jury?—Yes; and in one case they did it.

1237. Can you have what is called a good jury, not exactly an ordinary jury, if it is desired?—Yes; if either of the parties think it desirable, or if I myself think it desirable, an application may be made to the Court to direct the sheriff to select special jurors, who then form what is called a "good jury;" and in cases of emergency I have taken on myself to tell the sheriff to bring me a better class of jurors, and he has always done so.

1238. Does the sheriff select the jurors for you?—Yes.

1239. How long have you had this system in operation?—Since the year 1853.

1240. Did you ever know of disagreements among those juries?—Never but once, and on that occasion it was not a party question, therefore I took it to be of no moment; after sitting until nine or ten, the parties both agreed to leave the matter to me to find the verdict, and the jury who remained approved of my verdict.

1241. Now this matter of assessing damages is a great trial of whether a jury are temperate and judicious, or not?—Yes.

1242. Have you found that their assessment of damages has been guided by right principles?—Yes, certainly; and from close observation, I am of opinion that generally there is more temperance in cases of an exciting nature, shown by a jury of six than by a jury of 12.

1243. Do you think that the jurors themselves would rather have the smaller number, so as to be called to serve less often?—I know that they would. It constantly happens to me to be the hearer of complaints of jurors' grievances. I see the almost intolerable grievance that jurors are subjected to when several courts are sitting together, in being dragged about the courts in large numbers; the more respectable and valuable jurors go away and submit to the chance; indeed, they even submit to the payment of fines, whereby the administration of justice suffers, and whereby there is a distinct jury grievance.

Dr. *Ball*—continued.

1244. Have you formed any opinion as to whether it is advisable to give the power of selecting jurors to any person or any tribunal?—I have no doubt that it has become a matter of necessity in practice to give a power of selection, not for making the jurors' book, but after the panel is put into the sheriff's hands. You might as well have no sheriff, I think, if he has no power of selecting the jurors.

1245. Would you propose to make any improvement with reference to the qualification of jurors?—I think there has been an improvement. I believe that the amended Act has already much improved them; and I would suggest further that there should be a little more variety in the class of jurors, so as to catch idle gentlemen, people of leisure, eldest sons of justices of the peace, or knights or parties living in the town who are not rated citizens of the town. They might be taken in by varying and extending the nature of the qualification.

1246. What do you say with reference to the exemptions that the law now allows?—The exemptions are nearly intolerable. I know gentlemen of my own profession, barristers, and solicitors, and doctors, and others, who have long since given up practice, but who from their names having been on the Bar list, claim exemptions from serving. I know one gentleman, not at all a rich gentleman, who pays two sovereigns a year for the privilege of having his name on the circuit list of his town. He has never been there certainly for 25 years, so that he has paid during that time 50 sovereigns to take that power of exemption. He is a most respectable and intelligent man.

1247. But do you think, speaking of your own profession, that some of those gentlemen who follow the Bar at remote distances might be employed as jurors?—I think so, if they are not taking briefs, and they would not be such bad jurors as the public may think.

Mr. *Bruen.*

1248. Does the sheriff select your jurors from the general jurors' book, or the special jurors' book?—From the general jurors' book ordinarily, but in the case of good juries, he takes them from the special jurors' book. I know that provision was made in Lord O'Hagan's Act distinctly on that point. I think that he selects them with intelligence, and not as a mere machine.

1249. He does not select dead men, I suppose?—No, but what he may be obliged to do in ordinary processes I do not know.

1250. I suppose you do not find that two or three members of the same firm are forced to serve on the same jury?—Never.

Mr. *Verner.*

1251. Have you known instances of juries being called in two courts in Dublin at the same time?—Yes; and not only that, but I have known instances of jurors having been actually fined for non-attendance at one court when they have been present at another. I believe I know one man who

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Mr. *Verner*—continued.

who paid a 20 *l.* fine, though he had gone to serve in another place.

1252. A gentleman serving on a jury in one court was fined for not being on a jury in another?—Yes; he told me that he would rather pay the 20 *l.* than have any more trouble about it. The sheriff could not help him, because he was forced to summon a jury without discretion.

1253. That might, so to speak, cause a clashing between the courts?—Yes, certainly; it affects the administration of justice because it disgusts every decent juryman; and it is quite natural, in my opinion, that it should.

Mr. *Law.*

1254. What class of cases are they exactly that come before you; are they undefended cases in actions for damages?—Yes; actions for damages, sometimes for cases of assault or libel or seduction, and that class of cases some of which may be somewhat exciting.

1255. They are all, however, cases in which there has been no defence?—Yes; I do not think that there is any class of cases that require more temperance than those cases of damages for sentimental causes.

Marquis of *Hartington.*

1256. Do I understand you to say that you are in favour of a selected panel in all cases, or only in the case of your own juries?—So far as I have considered the subject, I think it would be advisable in all cases.

1257. That is to say, you would have a self-acting process for the formation of the jurors' book?—Yes, certainly.

1258. With a power of selection, on the part of the sheriff, in forming the panel?—Certainly.

1259. On what grounds have you formed that opinion?—I do not see exactly what use the sheriff is if he is obliged to summon a man whom he knows to be idiotic, or drunken, or a relation of the parties, or to be from some other cause a party that all reasonable men would say ought not to be on a jury.

1260. Would not most of those disqualifications be better ascertained at the revision, if the revision was properly conducted?—The more perfect the revision the more nearly would the sheriff be a machine. But I do not think that any man fit to be a sheriff ought to be absolutely a machine; he might be so, and yet knowingly thwart the administration of justice. Of course he should act with great caution.

1261. If you give the sheriff the power of selection do you not throw open the door to a partiality?—Yes, as an extreme question I must say you do, but practically I think it would not be so. Practically, I do not think that that power of the sheriff has yet been, even in exciting times, abused. I do not mean to say that there never has been such an instance, for I would not venture to say that.

1262. You would, I suppose, direct the sheriff to summon all the jurors, as far as he could, in their turn?—Certainly, that is very important, to have a rotation, because that makes less temptation for the sheriff to have a favourite juryman, or to use his powers in any way improperly.

Mr. *Downing.*

1263. I think you spoke of a juror being fined in one court, who was actually attending in another court?—Yes.

Mr. *Downing*—continued.

1264. Might I draw your attention to these observations of Lord Chief Justice Whiteside, just reported, namely, that he has "had considerable difficulty in obtaining full juries. The panel was gone over two or three times, fines of 20 *l.* being recorded against all who did not answer and were not excused." Then he says, "I am told by the sheriff that he was compelled to summon jurors to one court though he knew that they were required to be in attendance at other courts." He adds, "It would be well to call the attention of the Committee now sitting in London to these facts?"—Yes.

1265. This is a state of things that does really require amendment, does it not?—Yes; it was to that circumstance that I was rather pointing when I said that I do not think the sheriff should be a mere machine.

1266. Did you read the evidence of Mr. Serjeant Armstrong before the Committee of last year?—Yes.

1267. You differed from him, did you not?—Yes, I did; I think he gave stronger evidence than I agreed with on this point.

1268. Have you any recollection of what was said by a certain Crown prosecutor, who said, "Leave it to me to select the jury."?—Yes; and I think such phrases have done too much duty against us; they have been very extensively quoted.

1269. Is it not the fact that a sheriff in the north was put aside on the ground that he did not summon the jury indifferently?—I think so.

1270. I believe that there have been one or two disagreeable cases in the north?—I believe so; but I do not think that we can charge the Crown prosecutors with having obtained too many convictions in Ireland.

Mr. *Bruen.*

1271. I believe that that removing of the sheriff was grounded on a case in which the verdict of the trial was distinctly against the charge and opinion of the judge, was it not?—I am not acquainted with the merits of the case I confine myself to my own business, which is civil business.

Marquis of *Hartington.*

1272. You have heard it suggested, have you not, that the revision should be conducted by the magistrates?—Yes.

1273. Suppose a juror is objected to before the justices, and the justices, after hearing all the objections, leave his name on the list; would you leave it in the power of the sheriff, or rather the sub-sheriff, after the justices have decided that he was a fit man to be on the jury, to exclude him permanently from serving on the jury?—I would not. That is just one of the cases where I think the sheriff ought to be a mere machine.

1274. But then, if you allow discretion to the sheriff at all, how can you prevent his having such a discretion as would over-ride the deliberate decision of the justices in certain cases?—Where there has been a deliberate decision of the justices, the sheriff ought not to take upon himself to set aside a juror unless it is in a very extreme case, or where the judge ordered him to do it.

Monday, 18th May 1874.

MEMBERS PRESENT:

Sir Michael E. H. Beach.	Mr. Law.
Dr. Ball.	Mr. Mulholland.
Mr. Bruen.	The O'Conor Don.
Viscount Crichton.	The O'Donoghue.
Mr. Downing.	Sir Colman O'Loghlen.
Mr. Henry Herbert.	Mr. Plunket.
Marquis of Hartington.	Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, BART., IN THE CHAIR.

Mr. JOHN LEAHY, called in; and Examined.

Mr. *Herbert.*

1275. YOU are Chairman of the County of Limerick, are you not?—Yes.

1276. And you are a Queen's Counsel?—Yes.

1277. How long have you been Chairman of the County of Limerick?—For ten years.

1278. Were you Chairman at any previous time in any other county?—Yes, two years previously I was Chairman of the West Riding of the County of Cork, and three years in county Louth, the county of Louth.

1279. You are a magistrate of the county of Kerry, I believe?—Yes, and I have been so for the last 30 years.

1280. And you have attended the grand jury regularly, I presume?—Yes, I have attended the grand jury when able to attend since I ceased practising at the Bar, and I am a resident proprietor in Kerry.

1281. You were also the Crown prosecutor in the county of Cork for many years, were you not?—Yes, for 10 or 12 years.

1282. Are you well acquainted with the southern counties of Cork, Kerry, and Limerick?—I am well acquainted with the counties of Kerry and Limerick. I am pretty well acquainted with the West Riding of the county of Cork, and part of the East Riding.

1283. You were not examined on the Committee of last year, were you?—No, I was not; I was now passing through London, and I was asked to give my evidence, though not summoned.

1284. Have you read the evidence given before the Committee of last year?—Yes, I have read some of it, and I was present when some of the witnesses were examined.

1285. Do you think that the old jury system was a satisfactory one?—No, I do not think that it was. The old jury system was defective in a great many respects, in my opinion.

1286. With regard to Lord O'Hagan's Act, did that work satisfactorily?—No, it has not worked satisfactorily at all, and the Committee have so many instances of the way in which it worked badly, that it would occupy time unnecessarily if I were to trouble the Committee with any lengthened details.

Mr. *Herbert*—continued.

1287. That Act was amended temporarily last year, was it not, after the Committee sat?—Yes.

1288. How has the amending Act worked?—The amending Act has worked better; however, it is anything but satisfactory at present, in my opinion.

1289. Will you be kind enough to give the Committee the reasons why, in your opinion, the amending Act has not worked satisfactorily?—The amended Act has not produced a class of jurors as now rated, at all sufficiently intelligent, educated, or free from intimidation as a class, and not independent, in my opinion.

1290. Is that on account of the lowness of the qualification?—The qualification may be increased in many cases, and ought to be increased as far as the number of properly rated occupiers in each county would permit; but in addition to that, a great many other persons ought to be put on the jury list, representatives of more intelligence than exists now in the jury list; I may state in what respects I think the jury list ought to be extended. First, I think that freeholders and the leaseholders ought to be put on.

Chairman.

1291. Up to what amount?—The lowest class of freehold qualification for voters is 20 *l.* and up to 50 *l.* The leaseholders are 20 *l.* and 50 *l.* also. Under the old Act the qualification was 10 *l.* freeholders, having a profit under lease above a fair rent to a solvent tenant. The Act says, "above reprises" 20 *l.* leaseholders and also some householders. In those cases the Act was in force for 33 years. The jurors to be selected then generally had leases, but leases were very much done away with afterwards, and the result was that instead of the law being complied with under the 3rd and 4th of William 4, the sheriff was forced to vary from it in every way, and to select occupiers and others having no freeholds or leases, who did not come within the meaning of the Act of Parliament. It was not legally carried out for more than 30 years, and that accounts for a great many Bills

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that were brought into Parliament from time to time, but not passed into Acts, though proposed to be so by several Governments. The Act was very defective, and beyond all doubt a new Act has been for a long time needed. I may state with reference to this new Act of 1871 that I approve of it in principle. I think it only needs amendment in several particulars, such as increasing the rating and putting on educated and intelligent classes to make it a good Act; but I would not go back to the selection by the sheriff at all.

1292. Why not?—I think, in the first place, with reference to the old Act, there is no doubt that we had no regular jury packing in the south of Ireland as it is said there was in the north of Ireland, yet the sheriff, in my opinion, did not exercise his powers as fully and as effectively as he ought to have done under the Act. The general complaint against him was that the same men were always summoned from localities around the towns. They became, if I may use the expression, "habitual jurors"; you knew their faces. The mass of fit and proper persons were not at all summoned through the body of the county. That, in my opinion, was done very much by the sheriff, in order to save the expense of summoning jurors from distant places; that was complained of very much. I do not recollect any general outcry against the sheriffs in the south of Ireland for packing juries, but beyond doubt there was an opinion in the minds of many persons that the sheriffs did not exercise their discretionary powers without some occasional dissatisfaction, particularly so, as, I believe, contrary to the law, they continued in office from year to year, and often, and up to the present, for 15 or 20 years and upwards. The public often supposed that the sheriffs had feelings with regard to putting certain persons on the juries or leaving off their own friends who asked the favour of being excused. One of the great objections in the south of Ireland was that those "habitual jurors" were put on. I know of my own knowledge that personal applications were made to them to leave off their friends, and they did so. In other cases their putting on some men not legally qualified caused an angry feeling. Their position was no doubt invidious, and one difficult to carry out; but, on the whole, there is no doubt, in my opinion, it was right to get rid of the selection by the sheriffs under the old Act.

1293. Would you propose to substitute any other system of selection than that of the sheriff?—I do not know of any other system of selection, except by the most strict and rigid revision; either by the chairman of counties, as last year it was proposed by the Judges who were examined. I find now there is an inclination to have a preliminary examination at a special petty sessions of the jurors' lists. I have no particular objection to that being done; but in my opinion it would be a failure. Under the former law there was to be a special sessions for settling the jury lists, at which the magistrates were supposed to attend. When I was Chairman of Cork, my deputy clerk of the peace, a most excellent and intelligent officer, Mr. Bull, told me that he could not often get even two magistrates to attend, though some lived in the neighbourhood of the towns for holding those sessions. The jury lists were therefore constantly utterly unprepared and unsettled, and then we had to go back to the

Chairman—continued.

jury list of the year before. Under that state of things, I reported to the Government that something ought to be done, and they directed the resident magistrates to come to the revision, for the purpose of settling the lists. I am under the impression that at those special petty sessions they would not now generally attend. I think that out of about every five magistrates generally, there is not an average of two who attend at the ordinary petty sessions, or even at quarter sessions. I do not think that they would attend at the proposed special petty sessions. In some counties, if it was a hunting day in the neighbourhood, you would hardly get any magistrate at all. Another thing is that some magistrates have prejudices or feeling honestly entertained against the new Act. They think it is so bunglingly drawn that it is a ruin to the country, and destruction to property; and others take party view against it, or abuse it for its failure, and bringing the law into contempt. A great many of the county gentlemen say, "We will have nothing to do with patching up that Act." My view would be, concentrate all the power on the Court of Revision (as was suggested by all, I believe, examined last year), namely, to give full power to the chairman at quarter sessions to strike off those that appear on the evidence to be unfit, and put on others that are fit to be jurors. For that reason I would submit that the different officers who may be pointed out as effective for the purpose, ought to attend the revision, and be sworn "and obliged" to give evidence. I think also that the baronial constables, poor-law officers, petty sessions clerks, and the sub-sheriff ought to attend.

1294. Do not the magistrates attend at the quarter sessions at which you preside?—Not many, except for granting licenses.

1295. That is to say in the county of Limerick?—Just so, and they did not attend in the county of Cork either in numbers, when I was Chairman.

1296. If the magistrates did really attend, would not that be a good mode of revising the lists?—Yes, it would be a good preliminary mode of revising the lists by getting rid of illiterate and very poor persons who could not afford to go from home for a long distance, including those who have no help to leave behind them on their farms; but with regard to going beyond that, I would rather think that the magistrates might have differences of opinion with reference to who ought to be left on or who ought to be left off. I would give the whole power which might be brought to bear at the revision before the Chairman, and perhaps the justices might be associated with him. I would give full and proper notice, and I would have the clerks there to tell you who are ignorant men, and so on; I would have the rate collectors there first; I would have the clerk of the union; I would have the sub-sheriff, who is the man who had the selection before, to be examined on oath by the Chairman. According to the view of Serjeant Armstrong, the county surveyors would be important witnesses, but the county surveyor generally only knows the contractors, as far as my knowledge goes, and except those who are generally very intelligent farmers, he would not know very many. It would be most important that the sessional Crown solicitor should attend, and also I think it most important that the assizes Crown solicitor should attend. I think that he ought to attend

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attend for this reason: in striking off men from the list at the revision, it has occurred to me several times that the local Crown solicitor may have a natural bias or disinclination about rejecting people who may think it was an offence to strike them off; the local Crown solicitor is generally in practice in the county, and I would have him assisted by the Dublin solicitor, who ought to know more of the county than he generally does.

1297. Would you compel the Crown solicitor to be there?—Certainly; I would make him assist in bringing up the names and make inquiries beforehand who were proper persons to be on the list.

1298. Would you make an educational test, that men should be able to read and write, compulsory?—Certainly.

1299. How would you propose to carry that out?—As it is at present, if they cannot read and write, they are disqualified. For the purpose of adding to the list, I would put on freeholders and leaseholders. Those are known to the clerk of the peace very well, and are generally registered as voters; but in the poor-law books, there is always a column to show who are the landlords; and if there were any landlords who were not rated sufficiently as occupiers and jurors as such, I would put them on as landlords. I would put on all graduates, colleges, and all men who have held the office of grand jurors at any assizes, officers of militia, &c., including many young gentlemen who are only out for training 21 days in the year; and I would put on others of the educated classes also, the eldest sons of magistrates, sons of peers, and all professional men not in actual practice as in the proposed English Bill, and would adopt every clause in that Bill at all applicable to Ireland.

Mr. *Herbert.*

1300. You said just now that owners of property were not satisfied with the last Act of Parliament that was passed on this subject; I want to know for what reason?—They do not think that the jurors are sufficiently intelligent; they have the prejudices of their class, and it is perfectly manifest that however the Jury Bill may work in ordinary cases, yet in sensational or exciting cases, such as those of landlord and tenant, where there may be through the press or otherwise feelings against the landlord, or party questions and religious questions, such as proceedings against clergymen, or strong political cases, you cannot calculate on this Act providing a totally independent class of jurors, and must rely solely on the right of challenging or setting aside; or, of course, if the lists were very strictly prepared, there should be great power given to the Crown solicitors, and in that way it may, perhaps, be made to work; but it is impossible to believe that verdicts would be found in exciting cases if the Act remains as it is now.

1301. Is it the fact that a number of jurors are summoned to your court who do not attend?—A great number of jurors are summoned who do not attend; and there is one great defect in the Act, that the sheriff has to pass them over, and initial them in the list where they do not attend, though summoned. There is an advantage gained by them in that way so that they might not come on again for two years. The persons who are initialed are those summoned and thus excused for future service, but they ought to be only those who really attend.

Mr. *Herbert*—continued.

1302. Is it the fact that a number of jurors do not answer to their names in order to see if others are called before them?—That is the case. I heard a suggestion made here by one of the honourable Members of the Committee, which I think is a most excellent one, which was, that after the grand jury is sworn at every assizes and every sessions, all the jurors on the panel for that assizes or sessions should be called out one after the other, and an entry made of those who do and do not attend; it is the best suggestion, in my opinion, for carrying out the Act in that respect that I have heard, and those who do not attend ought to be fined by the judge or chairman, and those who answer initialed; if they attend, it is no fault of theirs if not called to serve; and persons then called and who ought to be exempted are struck off and excused. If judges and the chairmen carry out their powers of fining, you will have a very good attendance, and much smaller panels will be necessary than now. In my individual case I have carried that out to a small extent, and I have fined grand jurors and common jurors, and sometimes the fines have been levied. At the last grand jury at Limerick there were some gentlemen of high position who would not answer to their names at all; that is defeating the policy of the Act. I fined some of them 5*l.*, and I directed the fines to be levied unless they came up at the next session and show that they were absent from the country or had other good excuses. I have always proof of the service of the summons, and no difficulty in that respect.

1303. Then how would you prove the service of the summons?—I tell the sheriff that I will fine him unless he has proper bailiffs to prove the service of the summons, and the bailiffs come forward and prove it; and then there is no harm done to any juror not properly served, because under the Fines Act of 1851, which is the 14th & 15th Vict., any juror who is fined has a right of appeal to the next quarter sessions, and on appeal to the court of quarter sessions he is sworn, or gives evidence, before the chairman, and he proves perhaps that he was out of the country, or that the summons never reached him, and if he did not do any act to avoid service, the fine is taken off, and no harm is done. One great misfortune is that the judges at assizes generally remit the fines on all who do not attend.

1304. You state, in fact, that with the present panel, if they answered to their names you would get good juries?—Yes; you might dispense with a good many jurors; I heard the honourable Member for Cork refer the other day to the probable state of the county of Cork in case the panels were reduced; I have looked into that, and so far as it relates to Limerick and Kerry, in my opinion the number of jurors are not at all required which is supposed. I cannot speak so decidedly for Cork, but I know Kerry well, and Limerick well, and so far from the panels not being large enough, I think the qualification may be raised, and that the panels would be sufficient if they were smaller. The only difficulty would be about the special jurors at the court of quarter sessions. I can give a statement which I have drawn out of how it would stand in the counties of Limerick and Kerry

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Kerry with respect to the number necessary. In the county of Limerick, according to the rating in the amended Bill, which is 30 *l.* for counties for common jurors, and 12 *l.* for householders occupations in town (which is very good). There are two divisions in the county of Limerick; there is one court of quarter sessions for criminal business in each division for each quarter sessions; there were two formerly in each division when I was first appointed chairman, but there were so few cases, and difficulties of getting proper jurors, that the grand jury represented to the Government and Privy Council that they might do away with one of the sessions in each division. The matter was referred to me, and I acted on the principle suggested by my friend the honourable Member for Clare, Sir Colman O'Loghlen (who has had great experience as chairman), that some of those sessions for Crown business might be done away with, and that we might concentrate the Crown business more; and accordingly, under a Privy Council Order, two sessions were done away with in Limerick for Crown business only; the civil session continues as before in each division. The expense to the county, and the expense of bridewells, and bringing prisoners backwards and forwards, and the exposure of female and other prisoners not on bail being taken through the county, perhaps handcuffed, in open cars, and have to be brought there and brought back again. For those two divisions there are four sessions in each division for Crown business; that is to say, eight sessions in all in the year. I would say that for those eight sessions a panel of 48 common jurors ought to be enough; that would be four juries; and certainly we never want more than two juries; that is to say, 24 men out of the 48; any not attending would be fined, unless they gave a good excuse. If the revision was strict enough, by excluding men over 70 years of age, or otherwise unfit, eight panels of 48 each ought, in my opinion, to be enough; that would be under 400 common jurors for the county of Limerick; that is to say, for the quarter sessions. Then for the assizes; although I do not know so much about that, certainly I should think that a panel of 100 common jurors for each assizes ought to do in Limerick; that would be 200 added to, say, 400; that would make 600 common jurors for the court of quarter sessions. Then there would be, in addition, special jurors, which require 150 *l.* rating, in the county of Limerick, and 30 *l.* for towns. I should say, with reference to common jurors, that there are far more than enough common jurors in the county of Limerick at the 30 *l.* rating, according to the printed return; and also for special jurors. Now the special jury panel for the county of Limerick would require eight grand juries for eight sessions; that is to say, 184; and 184 would leave about 600 common jurors to be supplied out of the common jurors; 184 grand jurors, assuming that 23 attended the special list in Limerick, would come close on the special jury list certainly. I find, practically, that never more than 17 attend (I hardly ever get a full grand jury).

Mr. *Downing.*

1305. You now take the number rated at 30 *l.* a year, do you not?—Yes, but I say that the qualification ought to be raised as high as every county would admit; I make out that the qualification might be increased to 40 *l.*, according to

Mr. *Downing*—continued.

the printed table. Now with regard to Kerry, I will state how that stands; in the county of Kerry there are common jurors rated at 30 *l.*, and 12 *l.* in towns; 80 *l.* in the county for special jurors, and 30 *l.* for towns; there are 1,275 common jurors in the county of Kerry with that rating, that is to say, 30 *l.* The main point is to see what would be required for the county. There are 12 sessions in the year in the county of Kerry, taking 48 for each panel of common jurors, that is 576; say two assize of 100 each, that is to say, 200, which makes 776; whatever the number is, that is the number that would be necessary for the sessions and assizes for common jurors; then there is in addition to that about 200 special jurors.

1306. Do you include the grand jury in those figures?—No. I will now come to the grand jury; 12 panels of the grand jury would make 276, that is to say, assuming that 23 attend. You have the number according to the printed table, whatever that is. With regard to the county of Cork, I made a rough calculation, but I cannot say that it is accurate, but the honourable Member for Cork will know very well how that stands.

Mr. *Herbert.*

1307. Do you think that it is necessary to have grand juries at quarter sessions?—My own opinion is that the time has not perhaps come for abolishing them, because the question might arise whether you ought to have grand juries at the assizes; but I do not see practically in 15 years' experience as chairman that grand jurors at the quarter sessions were of much use, and I think they may be dispensed with, inasmuch as that would let out so many good jurors for general purposes. They were of use formerly, but now most of the cases that come from the petty sessions are sifted there by the resident magistrates and otherwise, and the proportion of bills thrown out by the grand jurors is very small. If it was to be a question for requiring more jurors for the ordinary administration of justice, I think the lesser evil of the two is to do away with the grand jury.

1308. You are of opinion, are you not, that in every county the qualification should be raised as far as possible?—Yes.

1309. Would you not be leaving out a number of good men who are not quite so highly qualified with regard to rating; are there not a great number of men between the 20 *l.* and the 30 *l.* rating who would be as good as men between 30 *l.* and 40 *l.* rating?—I know some jurors who are rated at 150 *l.* a year, and I think they can hardly write their names; they are certainly not more free from prejudice and intimidation than some of the lower classes, many of them. Some of the higher class farmers are men that are much more marked out for public condemnation or for pressure on them, or canvassing, if they act contrary to the public feeling, than the lower class would

1310. Did you see some of the evidence that was given before the Committee to the effect that it was important to give the jurors notice by post, and what is your opinion about that?—My opinion is that in all except seven counties in Ireland service of jurors by post would be effectual, but in some of the larger counties, like Cork, Kerry, Galway, Clare, Donegal, Mayo, and Sligo, I think the sheriff should summon by post those who live in

Mr. *Herbert*—continued.

in towns; I would say in market towns, wherever there is a weekly market held, which is generally the case in everything like a village; he would summon them by post in those towns and within a certain radius round about; but in remote districts a difficulty arises with regard to summoning men in those remote districts. I heard it stated here the other day that the summons servers at petty sessions would be good men. I have been a magistrate for 30 years, and I do not think so at all. I attend petty sessions occasionally in different parts of Kerry I am connected with by property, and I can state that the summons servers are a poor set of men generally, and if they behave improperly there is no effective available control over them. In petty session districts there are often 10 or 12 magistrates, and if you try to dismiss one of those men, unless it is a very clear case, a great many may take his part from motives of humanity. His wife and children may be considered, and you would not get him dismissed. But if there is to be a summons server at all besides the constabulary, I think it ought to be a summons server selected from the process servers of the Court of Quarter Sessions. The sheriff in Limerick took advantage of a suggestion of mine, which he found worked admirably as to the use of those as his bailiff for executing decrees. I suggested that he should select proper men from such bailiffs (men who are paid 10 *l.* salary and fees, the place being worth often 30 *l.*), and if they neglected their duties they would be dismissed often by me. Now, I think they would be better bailiffs for serving the summonses than the bailiffs of the petty sessions; but I am in favour of the constabulary for those remote districts. It is said that the constabulary have other things to do, and could not do it; but service by them would be good for the administration of justice. The constabulary, I think, might be called on to perform the duty, and there cannot be better men for the purpose; they go round at all times of the year. They take the Census, and do other things; they serve notices for the poor law guardians, and execute decrees in civil cases for debts under 40 *s.* They also execute decrees for possession of overheld tenements, and the people are not on bad terms with them; they would not be frightened at seeing them coming round.

Chairman.

1311. What you mean is, that the constabulary do a good many things of a kind which would be more or less similar to the service of these jury summonses?—Yes, in most parts of the county, I am happy to say, there is almost a total freedom from crime; and they would have plenty of time to go round, and they would be the proper persons to serve the summonses. I believe, that is more than doubtful under Lord O'Hagan's Act, and the amended Act, that the sheriff is not entitled to any additional expenses for service of summons on jurors.

Mr. *Herbert.*

1312. Is not it the fact that the sheriffs have been paid very largely, and that the expenses of this Act have been very heavy on the counties?—Yes, the expenses of this Act on the county have been very heavy. One great complaint against the Act in Kerry is this: on the grand jury at the last assizes I was chairman

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of the finance committee, and the money charged by printers, sheriff, clerk of the peace, rate collectors, &c., were enormous on the county, One great argument against the Act by the cesspayers is, that it touches their pockets in that way, and there is an outcry about it.

1313. Can you suggest to the Committee any way of stopping those expenses, or limiting them in a certain degree?—It is for the grand jury to control and limit them. The rate collectors are entitled to their expenses, and the sheriffs generally got them last assizes, but not in several counties. The sheriff in Limerick got over 100 *l.* and the sheriff in Kerry got 75 *l.*, and in Clare, I believe, 25 *l.*

1314. In any new Act do you not think that it should be put down exactly what the expenses should be?—No; every case is different. If the rate collector has large districts, he should get more than he gets in small, as greater or less trouble. Under the old Act the sheriffs ought to have paid the expense of summoning distant jurors, but not having done so, and being now forced to do it, it follows that they have no claim for expenses, except the difference between what they ought to have done before and what they now do. The high sheriffs who have the "honours" ought to indemnify them, if so agreed on.

1315. Have you known any failure of justice occur through the ignorance of juries during your experience of the late Act last year?—Yes, even since the amended Act. I do not wish to trouble the Committee with cases which a new Act like the Jury Act must lead to more or less. but under the late amended Act I will mention a few cases. I had a case in Limerick of a man who was to be tried as a prisoner for two offences, and he was also on the jury panel, and when he was called on the jury, he approached towards the dock to go into it; he thought it was his place that was under the 30 *l.* rating. I have found since the late Act that it is the greatest difficulty with some of the jurors who attend in even the clearest cases to make them bring in a verdict at all. They are inclined to disagree; but one of the cases that most commonly occur is that they come out of their room when consulting, and say that they do not understand the evidence at all; and say, "We cannot agree; nobody saw the crime actually committed, and therefore we cannot convict;" or they say, "There is only one witness, and how can one witness be enough." They cannot understand circumstantial evidence. Sometimes it takes hours to reason with them and explain the law. It is perfectly exhausting to the chairman to get them to understand the simplest propositions; but perhaps after a long explanation they would. But with reference to the working of the amended Act, I may just mention to the Committee that the chairman of my native county (Kerry), who was examined last year, stated that on the whole he found the Act working rather satisfactory: he is a first-rate chairman. Since the amended Act he must have found out, as some of my brother magistrates tell me that they could not have imagined verdicts worse than some in Kerry. The magistrates referred to are not at all inclined from political or party motives to find fault with Lord O'Hagan's Act, but men who are most anxious to have it carried out. I cannot attend at the quarter sessions of Kerry, as my own quarter

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sessions are going on at the same time; but I will quote cases that have occurred: one was in the Crown Court at Tralee: "Daniel Moriarty was put forward in custody, charged with the larceny of 35 *l.* 11 *s.* 2 *d.* from the person of William Connor, on the 11th of March. It was proved the parties were together in a public-house; that the parties had not known each other before, and that the prisoner had seen the money in the prosecutor's pocket, went over to him, sat on the same chair, and was seen putting his hand into the prosecutor's pocket, as he said, searching for a pipe. The prosecutor was drunk at the time. In a short time afterwards the money was missed, and when the prisoner was arrested 26 *l.* odd was found in his possession. Throughout the day before he had not a shilling. The foreman handed down the verdict of the jury. The clerk said, 'Have you agreed to your verdict?' The foreman said, 'Yes.' Clerk: 'You say the prisoner is guilty?' A juror: 'What is that you say?' (A magistrate on the Bench): 'There are some jurors objecting to the verdict?' A juror: 'We are not agreed' (laughter). Chairman: 'Gentlemen, have you not been consulting?' The same juror: 'No, we have not' (great laughter). Chairman: 'Then you had better retire.' Amidst loud laughter in the court, the jury then retired. In about a quarter of an hour some of them came into court again. A juror: 'We want to ask a question.' Chairman: 'All the jury must be within hearing; let the foreman bring out his jury.' The jury then came out and demanded to see the money. The request was granted by his worship, and they retired again amid laughter in court, to consider their verdict. They found the prisoner guilty, and as there were previous convictions against him, he was sentenced to seven years' penal servitude, and after that seven years of police supervision." They found him guilty in the end, after satisfying themselves by seeing the money; and justice was satisfied in that case.

1316. Was it not from the anxiety that the jury had to find the man guilty or not guilty, as the case may be; was it not anxiety on their part to do justice?—No, it was evidently to my mind to make an excuse for their differing. In Limerick also some men have been acquitted who were habitual criminals before, though the evidence was quite clear. When prisoners are acquitted in such cases, the jury cannot, until after verdict, know of their previous convictions (the law is so), and then when they have acquitted them, they frequently ask me why I did not tell them of the previous convictions, and they would have convicted.

Mr. *Downing.*

1317. Is that case of Moriarty given from your own knowledge, or merely from a report in a newspaper?—From a newspaper; but I heard from a gentleman present that it was correct. The next case is that of Patrick Doolan, which will show how hard it is to satisfy the jury in the most plain cases. In the case of Patrick Doolan, at Tralee, the charge was as follows: "Patrick Doolan was put forward, charged with a grievous assault on William Roche, on the 14th of January, at Oak Park. The evidence of the prosecutor was clear, and Dr. Hayes proved to having visited the prosecutor four times. The theory of the defence was that the prosecutor fell on a penknife that was in his pocket, and thus cut himself under the arm. His worship, in charging the jury, said that theory was too preposterous to put to a jury Chairman: 'Do you wish to retire to consider your verdict?' The jury said, 'No;' and the clerk of the peace desired them to 'consult.' A verdict was handed down. Chairman: 'Are they all agreed?' Foreman: 'Yes, sir.' Clerk: 'The verdict is, not guilty.' Chairman: 'Not guilty?' Foreman: 'Yes.'"

Mr. *Downing*—continued.

Mr. *Herbert.*

1318. Do you find that most of those cases, in which there are such verdicts as those which you have just referred to, are either from ignorance or want of experience?—They are from want of experience and from want of education. I do not think that they act corruptly, but in some cases of an exciting character they would be afraid to convict. I had a case at the last sessions, where a juror was not attending. The clerk of the peace said, "There was a doctor's certificate from a juror that he is ill, and cannot attend." I said, "if the doctor states that he is ill, although I do not act on doctor's certificates always, I will excuse him." Shortly afterwards the clerk of the peace saw him in court. The clerk of the peace inquired how it was, and he heard (and I have no doubt it was a fact), "that the juror did intend not to come, but he had been canvassed to come in and act as juror;" he did not act on the certificate, and came in and attended in court. In my opinion those few cases (independently of a great many others) show that the amended Act does not work satisfactorily. I may also state that the lists of the rate collector and the clerk of the union, though the greatest pains were taken by the clerk of the peace and myself at revision, were constantly incorrect. Men from 70 and 80 years of age came forward to be excused, who ought to have been struck off the list, and I think it is very essential that there should be some more rigid revision than there is.

1319. Are there any other suggestions which you would desire to make to the Committee for the amendment of the Act?—I heard a suggestion the other day of the great hardship in bringing jurors up in large divisions, such as those in the county of Cork or the county of Limerick. I heard it stated that it is a great hardship on the jurors bringing them so far, and that is really a hardship which ought to be remedied, if possible; but it so happens that in the county of Limerick there is a district called the New Pallas district, which has been notorious for the last three or four years for the most aggravated and savage assaults, and this very morning I got a newspaper showing that that state of things still continues, though I have given very severe sentences, some of penal servitude for five years. Another man has been nearly murdered three days ago, and there was another the week before last; if you divided the district I do not think that there would be any conviction in those cases, because the only way in which convictions can be obtained is by omitting to summon all the men from the immediate district, including publicans, so that if you carry out the suggestion of Mr. Fergusson (who is an exceedingly good chairman, although a very late appointment), to

Mr. *Herbert*—continued.

to divide the divisions into districts, and if that was done with reference to the New Pallas district, I am quite certain that there would not be many (if any) verdicts in the clearest cases. Mr. Fergusson stated that he had faction cases also in Cork, and that he did not think the jurors in districts would answer well for such cases; Mr. Johnson, the sub-sheriff, suggested that the chairman before the session might direct a longer panel to be summoned, but I think that course could not be generally adopted.

Mr. *Downing.*

1320. What is the area of New Pallas?—It runs from the Junction on to Castle Connell.

1321. Is it a barony?—It is in a division of two or three baronies in the division of Limerick; it runs along the foot of the mountains towards the Shannon. It is a great hardship, no doubt, that men from 20 or 30 miles off should be summoned, but how is the law to be carried out where it is necessary to omit summoning persons in the immediate district. The Crown solicitor and myself, and the local and resident magistrates, are of opinion that if the jury in those New Pallas cases came from the immediate district, there would not be a conviction at all; there are what are called three and four year-old faction fighters, and there is a regular state of terror in the district, and the same result would arise in other cases.

Mr. *Law.*

1322. Would not that suggested arrangement about the divisions be a very great convenience to the jurors?—No doubt.

1323. It is only in exceptional cases, I suppose, that the difficulty would arise as to summoning jurors from particular districts?—Yes.

1324. Could not those special cases be sent to the assizes?—I should be very glad if they were.

1325. You do not think it necessary to legislate for such cases?—That may be so; Mr. Fergusson stated that there was only one small district in the county of Cork where those fights arose.

1326. As a general rule, do you think it would be an advantage to carry out Mr. Fergusson's suggestions as to subdividing the divisions?—Yes, I think so, when practicable.

1327. Now with reference to those instances of odd jury trials which you spoke of, do you not think that those might be paralleled by similar cases under the old system?—Yes, perhaps so.

1328. For example, as to the jury who came out before they convicted the man to ask to see the money; have you not seen cases of that nature happen before?—Yes; a great number of them under the old Act sometimes as bad as the present system; I looked upon the old system as very bad.

1329. I do not understand you to say that the new system is to be exclusively credited with such peculiarities, for many similar cases must have occurred under the old system?—Yes, a great many; but not so many, I think, as we now have.

1330. At the last quarter sessions at Limerick how many cases had you of disagreement in criminal cases?—I had very few; I think there was but one.

1331. Therefore you cannot complain of the Act of Parliament as far as the court of quarter sessions at Limerick is concerned?—It has been, comparatively speaking, a county in which

Mr. *Law*—continued.

there have been a great many convictions, but it requires very great exertions on the part of the chairman to get a verdict at all.

1332. But they are got?—Yes. I have a list of the cases in Limerick before the passing of the late Act, and since the late Act. Since the amended Act (I am now speaking of the court of quarter sessions only, and not of the assizes at all) at the Hilary Sessions in 1873 there were 24 cases of aggravated assaults, nearly all endangering life; of those 24, there were only six convictions; 13 were acquitted; that was the first session after the passing of the Act. At the Easter sessions of 1873 there were, of aggravated assaults, 17; four were convicted of aggravated assaults; and although there was no question before the jury of any assault but one, which broke a skull and endangered life, the jury compromised it, by finding two guilty of a common assault only; that is often done; I suppose that there is a difference among the jury in those cases.

1333. Was not that always done?—Yes, more or less. I say that the verdicts at the Limerick sessions have been, on the whole, comparatively, as I believe, satisfactory since the passing of the last amended Act. As I have already stated, at the Easter Sessions there were 17 cases of aggravated assaults; four were found guilty of aggravated assaults and two of a common assault; and 11 were acquitted.

Chairman.

1334. Do you think that a greater portion of the men were acquitted than ought to have been acquitted, if justice had been fairly administered?—Yes, certainly; I only speak of cases where there was no possible doubt at all; some of the cases were perfectly clear, and yet some of the prisoners were acquitted. In the June sessions of 1873 there were seven cases of aggravated assaults; one was convicted of an aggravated assault and one of a common assault; in three cases the juries disagreed, and in three cases the parties got off on that ground.

Mr. *Downing.*

1335. Those are New Pallas cases, I suppose?—Yes, some of them are. At the Michaelmas Term in 1873 there were 10 cases of aggravated assault; eight of them were acquitted, only one was convicted, and the jury disagreed with regard to another.

Mr. *Law.*

1336. When you say that eight were acquitted, are they the number of the prisoners, and not the number of cases?—Just so.

1337. Therefore it is acquittals of eight individuals, and not acquittals of all charged in eight cases?—Just so. At the Hilary Sessions in 1874 there were 19 aggravated assaults by 19 persons against whom bills were found, and eight of them were convicted.

1338. Can you say how those eight persons were distributed over the number of cases that were tried?—No, 19 was the total of those that were tried.

1339. Do you know how they were grouped?—No; there may have been some convicted in every case. At the Easter sessions there were only four aggravated assaults, and three common assults, and four were convicted. Last term there were some New Pallas cases, but others that were to be tried were sent on to the assize.

1340. I think

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Chairman.

1340. I think you have stated that there is considerable dissatisfaction among owners of property with reference to the working of the present law in civil cases?—Yes.

1341. Can you give the Committee any instance in which the working of the law has been unsatisfatory?—No, I did not come prepared with the facts.

1342. What ground do you think owners of property have for that dissatisfaction?—There are the cases proved before the Committee by Judge Morris; cases such as The O'Conor Don's case. I am not aware of the particulars of other cases. I may state here, with reference to cases involving rights of property between landlord and tenant, or other important cases, I think there is a section in Mr. Lopes' Bill which, if it passes for England, ought to pass for Ireland.

1343. Which section do you mean?—I refer to Section 74, with reference to challenging jurors which says that "In all civil trials in the superior courts each party shall be entitled to exclude from the jury as many as six jurors, and in the inferior courts as many as three jurors, without cause assigned, and by leave of the court any greater number. This right shall be exercised by delivering to the officer of the court, whose duty it shall be to call the jury, a list of the names objected to before the jury are called." That clause would, I think, be of great use in cases where there may be any great excitement between landlord and tenant, or other property cases.

1344. Are you acquainted generally with the proposals of that Bill?—Yes, I have read it.

1345. I understood you to say that you would not approve of the provision in that Bill for the revision of the jury lists by the magistrates?—No, I have no objection to that as a preliminary winnowing, but I think that it would be better to concentrate all the power, and let all the public officers, with the assistance of the Crown solicitors, attend before the chairman, and make previous inquiry, and be active parties in pointing out to the chairman objections to any juror, leaving him to act on their testimony; the clerks of petty sessions, constables, police officers, rate collectors, and sub-sheriffs would know the men's characters perfectly well.

1346. Do you object to or do you adopt the proposals of the Bill with regard to the power of the sheriff?—I think that is a very good proviso for England, but it applies to a very different state of things from that which now exists in Ireland by the late Acts; that is, giving the sheriff a power of selection to the same extent that was proposed in the Bill of 1854 by Chief Justice Whiteside, and the other Bill, proposed by Sir John Young, that "Every sheriff shall enter or cause to be entered in the jurors' book which he shall have in his custody, against the name of every man who shall be summoned to serve on any jury, the date of such summons and the court where such juror shall be required to attend; and shall copy all such particulars as aforesaid as may be required for the purpose of distributing the burden of service on juries in as fair and impartial a manner as may be among the whole body of men liable to serve from the jurors' book or books, for one or for as many more preceding years as may be necessary." I think that that is a very good provision indeed; but the sheriff would have no power of selection according to the proposal here.

Chairman—continued.

1347. But do you think those clauses would be properly applicable to Ireland?—It would depend on whether or not you leave any selection to the sheriff; I think if you did leave any selection to the sheriff, it would be a very proper clause. But another medium course has suggested itself to me, if you leave the selection to the sheriff, namely, if it be the law, as Judge Fitzgerald decided at Cork, that the sheriff is not bound to take it in dictionary order, but simply to take so many out of letters A. and B., and pick out what he thinks fit.

1348. Is not that, in effect, the course which is suggested in these clauses?—Yes, and nothing in my opinion can be better than those clauses. I think that the alphabetical system as it is now proposed, and leaving it as it stands, will never answer in the long letters M, O, and C, and other letters, without some means of deviating from the alphabetical order; that is to say to distribute the long letters into numbers of fifties, as has been proposed, or to select every fifth or tenth man, not adopting the dictionary order, by which you will have all the members of the same family summoned together; it would be a very objectionable plan on coming to the long letters, but however that can easily be settled, and that alphabetical order could remain, with a selecting power to the sheriff, or as proposed above.

Mr. *Downing.*

1349. I think I understand the substance of your evidence to come to this, that previously to the passing of Lord O'Hagan's Act the jury panel was very defective indeed?—Yes.

1350. In fact, under the previous Act, there was no legal jury at all, was there?—Not the least.

1351. I think you have also stated that since Lord O'Hagan's Act was amended, you find an improvement?—I do.

1352. On the whole, in the county of Limerick, you are satisfied with the conduct of the juries, are you not?—To a great extent I am; but I believe that it might be much more satisfactory. I would not consider it permanently satisfactory.

1353. Of course, as the men get more experienced, they will know better; is that what you mean?—No; what I mean is that you should increase the number of disqualifications, and that you should take away several of the exemptions, and add considerably to the educated and intelligent classes.

1354. I think I understand you to say that you find fault with the verdicts of the juries?—Yes.

1355. Judges very often do find fault with juries' verdicts, do they not?—Yes.

1356. If the jury is always to act on the charge of the chairman, you might as well do away with trial by jury altogether, might you not?—I only refer to cases where there is no doubt whatsoever in the evidence.

1357. You charge very strongly in some cases, I suppose?—Yes; and unless you do charge very strongly in some cases you would not get a verdict at all.

1358. But Limerick is a very peculiar county, is it not; for instance, on account of the New

Pallas

Chairman —continued.

Pallas case?—Yes; there is no serious crime in the county to any extent.

1359. There are only two quarter sessions held in the county Limerick, are there?—Yes.

1360. Therefore a difficulty arises in Limerick which you have not in other counties, because you have only two districts to take jurors from?—Yes.

1361. That difficulty would not arise, for instance, in the county of Cork and other counties?—No; but you may get rid of the small towns elsewhere in the same way as in Limerick.

1362. Your proposal is to add the freeholders and leaseholders to the list?—Yes.

1363. You said, did you not, that there are very few who hold leases?—Yes: the 10 *l.* class are very few; that is to say, the class under the 3rd and 4th William 4th; there are very few of them comparatively.

1364. With regard to any that are rated over 20 *l.* or 30 *l.* they are on the panel in any case, are they not?—Yes; they are on the panel in any case; but men who have 20 *l.* freeholds, and 50 *l.* freeholds, not rated occupiers, are not on the panel.

1365. With regard to the revision, did you say that when you act as chairman in the West Riding of Cork, you had very few magistrates sitting with you?—They came at Bandon and other towns for the licenses, but very few stayed for the criminal trials; there were more in Cork attended than at Limerick.

1366. You have stated very correctly that under the old system the magistrates could not be got to attend at the petty sessions for the revision of the lists?—Yes.

1367. And people did not come in to claim exemptions when they might?—Yes.

1368. In fact it was a total failure?—Yes, that Act was a total failure; they never took the trouble to put the names on or revise the lists.

1369. If you went back to that system do you think you would find a better attendance of magistrates?—I think not.

1370. Of course a chairman of a court of quarter sessions who practises is always very anxious to get rid of the quarter sessions as soon as possible, is he not?—Yes, that is very probable; I do not practise since I became chairman of Cork.

1371. Is it not the fact that those who do practise, generally speaking do get rid of the court of quarter sessions business as soon as possible?—I do not say that; some may, but some superior court judges also hasten to dispose of appeals quietly; there may be a feeling with some chairmen who practise to finish quickly, but it must be very exceptional. For the revision we ought to appoint a day totally distinct from the ordinary sessions work, so as to give deliberate time to the revision of the lists.

1372. On the whole, do you not think that the chairman sitting with magistrates would be really the best tribunal to revise the lists?—I would have no objection to the magistrates sitting with the chairman to revise the lists.

1373. They would have the persons before them who live in the locality, would they not?—Yes.

1374. And they would have an opportunity of examining those parties on oath?—Yes.

1375. There would be no possible objection to a juror that would not be elicited, and the lists would go thoroughly revised to the clerk of the Crown, or the clerk of the peace, as the case might be?—Yes, I have no objection personally, but in some cases the magistrates at quarter sessions would have their own views, and perhaps they might take an opportunity on a point of practice or a point of law of overruling the chairman.

Chairman —continued.

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1376. But that they could not do if the disqualifications were set forth in the Act, could they?—Just so; but they might not be satisfied with the evidence; I think it would be perhaps better to leave it to the chairman himself.

1377. You said, and I agree with you, that it would be advisable to have the panel called over on the first day of the sessions?—Yes, and the attendance taken down; it is most important.

1378. Would you not propose to have them called by ballot, as they are in civil cases?—I would have their names taken down, and then ballot among them for the jury.

1379. With regard to the service of summons, you say you prefer the bailiff of your own court to serve them?—Yes; but I prefer the constabulary to anybody.

1380. Now with regard to your own process server, you know that he has always a large number of civil bills to serve, has he not?—Some have.

1381. Is it not the fact very often that complaints are brought before you of the process servers not serving some of them?—That is very rarely the case.

1382. Would he not be very likely to make the excuse that he had summonses to serve for the assizes?—The answer would be this: if there are two process servers nominally for one district, they are not prevented from going into another district to serve, and according to the popularity or activity of the men, some of them have a great deal more to do than others, and the sheriff could take the one that had not so much to do.

1383. Are there not sessions courts being held while the assizes are being held, in some of the counties in Ireland?—Yes; but the process server is only wanted in undefended cases at the beginning of the sessions; the process servers then go away, and are not required again.

1384. Would not the process server of the magistrates' court, who is immediately under their control and supervision, be a better man?—Yes, he would be under their control, subject as I said before, but I would like other public officers for that service best; it would be very hard to get the magistrates to dismiss the man in the one case, whereas the chairman can himself alone dismiss the process server of his court.

1385. You are aware that in the evidence given before this Committee last year, there was almost unanimity of opinion against employing the police in that service?—I do not know that there was.

1386. Do you not think that it is very objectionable to have a policeman who may be a witness in the case, or who may have a prejudice, employed to go to people's houses and summon them, and probably have a conversation about the very case that he may have to prosecute in?—The police, as a general rule, are so well trained, and are so alive to everything in connection with their duty, that that must be a very rare case, and not likely, in my opinion, to occur.

1387. But we must look to public opinion, must we not?—I do not think that public opinion would

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Chairman—continued.

would mind it; if you mind "supposed" public opinion, in everything, you will go wrong.

1388. I suppose you do not think that those amusing cases which you quoted furnish any strong reason against the working of the Act?—No, it is only to show that to some extent the law is brought into contempt, more or less.

1389. The press are very apt to take every opportunity they can of quoting such cases, are they not?—Yes, in every sensational case.

1390. With regard to the juror who was to be tried for an assault, and who was also summoned on the jury, it was not very extraordinary that he should approach the dock, was it?—No, it is nothing like nor so bad as the cases which have been already stated before the Committee.

1391. Now, with regard to the number of jurors, you gave the Committee the number of jurors that would be required in the county of Kerry, and you made it 750, I think?—Yes.

1392. You approve of the system that the same man is not to serve twice in the same year, I suppose?—Yes, I think that that period of three years which has been stated is quite out of the question. My opinion is, that the time for which a man may be expected to serve is one assizes every two years; once a year in the quarter sessions. One advantage is, that you are educating those people for future service in that way.

1393. I understand you to say that you would make education a test of a man's fitness?—Yes, I would make education a test of a man's fitness to serve, as far as graduates are concerned.

1394. No, I mean with regard to a juror being unable to read or write?—Yes.

1395. When he can read and write, a man who is rated at 20 *l.* a year may be as intelligent as a man rated at 30 *l.*, may he not?—Yes, or 40 *l.* There are men rated at 20 *l.* in Limerick who are more intelligent than men who are rated at 150 *l.*

1396. You do not resort to rating test merely to get a more intelligent class of juror?—No; but a higher rated juror can better bear the expense of leaving home. I have been applied to by poor people to let them go, who have not enough to pay for their dinner in the town.

1397. Do you think that the chairman should have the power in such a case to discharge a person from serving on the jury?—Certainly, and I do so.

1398. Do you say that you would propose to raise the qualification in Kerry from 30 *l.* to 40 *l.*?—That would depend altogether then on the figures.

1399. The numbers have already been reduced by the late Act to 1,275, have they not?—Yes.

1400. Now, if you raise the qualification to 40 *l.*, that would take off 523?—Yes.

1401. That would reduce the number to 752; would you then have the number you would require for one year?—I would only raise it in each county according as the figures would bear, and nothing beyond that; I think that 30 *l.* at first sight, with a household qualification, seems fair in some counties.

1402. Now, with regard to the case in which a man obtained a certificate to let him off because he was canvassed, you know that was a very usual proceeding formerly, if a man was to be tried, for his friends to canvass the jury?—Yes, decidedly.

Chairman—continued.

1403. That is nothing new, is it?—Just so. The only question is, whether there are more cases probably to occur now.

1404. You only gave one instance, did you?—Yes, but it is going on to a great extent, I believe.

1405. Are magistrates canvassed also?—Yes, the magistrates are canvassed for licenses; if there were no licensing at quarter sessions, I think a great many of them would not go now. With regard to exemptions, I may state here what is very important. There is an exemption in the Irish Act which does not extend at all to England, and which lets a great many jurors off. In this Act of Lord O'Hagan's, after excluding barristers, attorneys, and other persons holding public offices, the schedule exempts persons licensed to sell or distribute stamps, or public officers paid by fees and per-centages. There is a head distributor for the county; he appoints some shopkeeper to sell stamps for him, and those stamps are sold in shops like bread or tea. Those persons who are generally respectable shopkeepers call themselves deputy stamp distributors, and they are exempted. I say that they ought to be made to serve, because they are not regular stamp distributors; and they ought to be called upon to serve Last year all the exemptions mentioned by Lord Coleridge which he proposed to abolish were good, I think; that is, I think he was right; I would exclude from exemption all those persons who sell stamps in public towns, but that is not the most important part of the Bill. Here is the section: "Persons holding any public office under Her Majesty's Government, or any public department, or under any local authority, and paid from taxes, general or local." Under that clause all the rate collectors are excused, who are about the most intelligent farmers of this class in the county, from serving on juries; they have plenty of time to collect the rates, and do duty as jurors also.

1406. Do you not think that it would be bad for them to serve on juries, mixed up with the people as they are in distraining or suing them?—There is very little of that now. The overseers in England are not excused, and they are the corresponding people in England to the clerk of the unions in Ireland. In the Irish Bill we have those exemptions which I have mentioned; we have baronial constables, who are exempted, and their assistants, and they are very intelligent gentlemen, and ought not to be exempted.

1407. I want to call your attention to this paragraph in the 4th section of Lord O'Hagan's Act. I see there are 11 counties called first class counties, and in towns in those 11 counties the 12 *l.* rating is the qualification for jurors, is it not?—Yes.

1408. In the next class, that is Class 2, which is an inferior class to No. 1, of course the rating must be 20 *l.*, which is quite a mistake, is it not; you do not see any reason why there should be a higher qualification for small towns than for large towns, do you?—No.

1409. You think that it ought to be the same?—Yes; with regard to the exemption of rate collectors and stamp distributors, I certainly think they ought not to be exempted, and with regard to the exemptions in Mr. Lopes' Bill, for advanced age, I think whatever is done in England on such a point ought to apply to Ireland; they ought to go hand in hand, as far as possible. I

Chairman—continued.

would exempt persons above 70 years of age, in addition to persons convicted for felony, and persons convicted for aggravated assaults, where they got more than six months' imprisonment; and I would have among the exemptions publicans and drunkards.

1410. How would you define a drunkard; would you say a man who had been convicted for drunkenness only once?—No; any habitual drunkard; it would be for the chairman to say; I would exempt attorneys' clerks also.

Mr. *Bruen.*

1411. With regard to the last question that Mr. Downing asked you, about the qualifications in cities, towns, and villages being different from the qualification in country parts, are you aware how a city, town, or village is defined?—I cannot see any definition of it, but I have mentioned that what occurred to me would be a town where a weekly market was held. I only speak of the south of Ireland; although I was chairman at Louth, I was not there long.

1412. Is it your evidence that you think that the reduction of the qualification should only apply in market towns?—Yes; I do not know any better definition than that.

1413. You prefer that to the rather vague expression of city, town, or village, do you?—With regard to a city there is no doubt about, but for a town or village I would say a market town. It is not always stated in the Ordnance maps, and a village may consist of only six houses.

1414. You gave some statistics with regard to the quarter sessions at Limerick in 1873, and of two sessions that have been held in 1874?—Yes.

1415. Now are you aware that in those cases which you spoke of a very large exercise of the power of the Crown solicitor to call on jurors to stand aside was made use of?—Yes, that was largely exercised; the Crown solicitor of Limerick is very independent in that way, and he does his duty very strictly; but notwithstanding that power to order jurors to stand aside, there are very bad verdicts in some cases.

1416. Is that power exercised more largely since the passing of Lord O'Hagan's Act than it was before it passed?—I think that it is.

1417. In all those cases which you have given to the Committee, I presume that you were present yourself?—With regard to what I read as to the two Kerry cases, I was not myself present.

1418. But in the Limerick cases you were present, I suppose?—They occurred in my court; I heard it from my clerk of the peace, who is an exceedingly good officer: he is deputy clerk of the peace. I have never seen the clerk of the peace for ten years; he is an officer in the Militia, and he lives in Paris, and that in my opinion is a great abuse of the office of the clerk of the peace under the Act 1 Geo. 4, requiring "*Residents*" to be appointed; he is an absentee. The clerk of the peace I look upon as a most important officer to carry out this Act of Parliament, and he generally employs a deputy, generally badly paid; and as I hear in some other counties, not competent.

1419. You said, I think, that you thought the service of summonses might be effected by post in all counties except seven counties?—Yes, or only in remote districts: Donegal, Mayo, Galway, Sligo, Kerry, Clare, and Cork. I think those are the seven counties.

Mr. *Bruen*—continued.

1420. Do you know Wicklow?—Yes, a little.

1421 Do you think that there are places in the mountains in Wicklow in which post letters are delivered always?—They are not so distant, I think, from post towns as for letters not to reach. I think that in Wicklow the people will at least once a week ask for letters. They may have relatives in America, for instance; but to meet the case of doubtful service, I would require the sheriff to send the letters 10 days beforehand, so that if any missed, they would be returned, and another mode of service might be adopted.

1422. You spoke of your having got rather a better attendance of jurors by fining the jurors more severely?—Yes.

1423. Can you give me any idea what amount of fines you have actually levied?—I never levied many; but the fear of it has a very good effect, particularly with regard to trying to compel gentlemen of position to attend on the grand jury. They object to go on with common men now. In two cases of gentlemen of high position, who would not serve on the grand jury, I put on a 5 *l.* fine.

1424. Did you levy those fines?—They have until next sessions to pay the fines. The clerk of the peace serves a notice on the party that he is fined, and the party fined has the power of appeal at the next sessions; therefore the argument about the danger of fining men does not arise, because a man who has really an excuse for his non-attendance can come forward at the next sessions.

1425. But how much have you actually levied?—I should say perhaps since the Act passed not more than in four or five cases. I generally take off the fines if an affidavit or other evidence is given, proving a good excuse; the clerk of the peace looks after that. If I do not excuse the person fined, it is the duty of the clerk of the peace to have the fine levied.

1426. With regard to the revision of the jury list, I think you state that the court of quarter sessions up to this time have not revised the lists in a very satisfactory manner; that is to say, the lists have not been very satisfactory?—Yes; the magistrates have nothing to do with that. I have found that though under the amended Act a declaration in the nature of an affidavit is made, that they have done their duty, and the clerk, under a certificate, verifies it at the sessions; and although I take the greatest pains at the revision in explaining to them their duty, and though my clerk of the peace is a most active man, and meets them before the case comes on, yet I find every sessions men of over 70 or 80 years of age, and most wretched illiterate persons, summoned on the jury.

1427. It is not owing to your own fault, of course, but do you think that it is owing to the faults of the officers?—Yes, certainly, they are not sufficiently inquiring; they are very much dissatisfied, and they say that it is hard to expect them to do the work when they are paid so badly for it; I would take the liberty of suggesting to the Committee, that the chairman ought to have an opportunity of paying them for expenses the same as it is in civil cases, not to exceed one guinea or twenty shillings in any case. There is a decided bias on their parts not to do their duty as strictly as they ought, because they

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Mr. *Bruen*—continued.

they are badly paid for their trouble in preparing the list, and do not get their expenses at the revision court.

1428. But surely their expenses are allowed to them, are they not?—No; they complain of the sums that they get from the grand jury for their trouble and work; they get 2 *l.* apiece, I think, in some counties; I speak now of the poor-rate collectors; at the assizes before last they were dissatisfied, and I proposed at last Kerry grand jury that we should give them according to extent of district for their trouble and work, and some of them got 5 *l.*, some of them got 6 *l.* and some only got 1 *l.* Mr. Herbert was on the committee with me.

The O'Conor Don.

1429. Do you not think that it would be better to fix the remuneration when the poor-rate collectors are appointed?—Yes, but they take the office at a salary, and their object afterwards is to increase it.

Mr. *Bruen.*

1430. You wish to assist them, do you?—No, on the contrary, I am for cutting them down, except as to giving them their expenses for attending revision.

1431. But you say they do not do their duty well enough because they are ill paid, and you wish to have the power to give them more, do you not?—Yes; for their expenses only. Let the grand jury give them what they think fit for the work. We can give expenses to any witness in civil cases to any amount not exceeding 5 *l.*, although we very rarely do that; but I think for the revision to be made effectual, and to obtain good willing men, we ought to be able to give them their expenses for the day.

1432. You think that that would really be the means of satisfying them?—To some extent, to give a moderate sum, with power to the chairman to withhold it if he pleased.

1433. With regard to persons being put on the list, did I understand you to make the suggestion, that landlords not living in the county, but who had property in the county, should be put on?—No, I meant landlords living in the county who are merely rent receivers; but they must be in the county, but not rated to sufficient amount to be special jurors.

1434. Then in the revision of the list, I think, you suggested that the Crown solicitor should be forced to make inquires beforehand?—Yes, both the assize solicitor and the local solicitor. The local solicitors may have naturally a bias, more or less, not to object to men; whereas, the Crown solicitor in Dublin, with a handsome salary, never appears, except at assizes, and I think it would be very well to make him come beforehand, and make himself a little acquainted with the county. That was done under the former system in Sir Matthew Barrington's time; he knew something of almost every person on the Munster Circuit.

1435. He would make inquiries beforehand, but that would add very considerably to the expense, would it not?—No; it would be very little expense; one day would do for the revision, and I would have everything concentrated on that day; I would have it fixed beforehand by the chairman, before or after ordinary sessions, so as not to hurry their business in any way.

1436. You seem to think that it is contrary to

Mr. *Bruen*—continued.

the law for the sub-sheriff to continue in office many years?—Yes, I believe so: there was an Act of Parliament to prevent their being continued. I believe that the law is not strictly carried out; the remedy, I believe, was by action for penalties by informers, wholly useless in Ireland in all cases; that, at least, is my impression.

1437. You think that the law still exists prohibiting sub-sheriffs continuing in office a great number of years?—Yes; at all events, they continue to serve; their being always in office is an advantage in one way, and a disadvantage in another, when people fancy there has been some improper selection. I may mention one instance in times gone by, over 20 years ago. I have even known a grand jury packed by a sub-sheriff who is now dead, packed for the purpose of obtaining an appointment for a baronial constable, the high sheriff not being resident in Cork as often at present occurs, and then leaving selection to sub-sheriff of the grand jury. I may add that I have never known any gentleman to complain against the sheriff for packing juries in Ireland, but I have known persons in individual instances to think that the sub-sheriff may have put some persons on the jury without regard to impartiality, and having the power to pack a jury if he thought fit.

1438. But you do not think that that has led to injustice, or any failure of justice, do you?—No, I think the great failure was in putting on the same persons, or not summoning fairly throughout the country.

1439. That is to say the sheriff did not exercise a power of selection sufficiently extensive?—Yes, he took those who were near, which cost him less than those at a distance. I think he ought to get some additional expense, but the Act of Parliament does not give him any at present, in my opinion.

Mr. *Plunket.*

1440. In what way do you suggest that the sheriff might exercise a partial discretion with regard to the taking of a certain number of names of jurors of each list?—Judge Fitzgerald, in a case that came before him in Cork with regard to a panel, decided there, on his own individual opinion (it is in his evidence), that he thought the panel was properly chosen in this way, that is to say, instead of taking it in dictionary order through A. or B., that the sheriff might take several names out of A. wherever he found them, and so as to subsequent letters.

1441. Do you not mean rather to say that he might take anyone?—Yes, I mean anyone, not the first; and he might then take anyone out of B., and so on out of C. Judge Fitzgerald thinks that is legal, whereas Judge Keogh thinks it is not legal; but whether it is legal or not, if the Committee think that the sheriff should have some power of selection, that would be perhaps a good plan.

1442. You would have no objection to a selection by the sheriff to that extent, I suppose?—I would rather have it remain as it is at present, with no power of selection, except to carry out the mechanical arrangements in a more perfect manner either by choosing every tenth man or every fifth man, or put them into fifties, or divide the long letters into two, three, or more batches, such as, for example, M. No. 1, M. No. 2, and M. No. 3; in fact my idea would be to take a letter containing

Mr. *Plunket*—continued.

containing an ordinary number, say 30 names, or to divide all the long letters that might contain, say 150 names, into thirties, or you might take it in dictionary order, and then ballot for them in Crown cases. It is very important in Crown cases to have the ballot, for people are otherwise always looking out with great anxiety for their names to see who is called out first; when once they are taken from the jury list in alphabetical or any order that has been agreed upon, then put them into a box and take them out by ballot.

1443. You would give to the sheriff a modified power of selection of that kind, so as to distribute the trouble of serving on juries as equally as possible?—No, I do not propose to give the sheriff that power; I only say, if the Committee think that the sheriff ought to have any power of selection, that would be according to Judge Fitzgerald's view of the law, as it stands.

1444. You seem to think, as I understand you, that the chairman, with the assistance of the magistrates at the court of quarter sessions, on a certain day, on which you would concentrate all the appliances in your power to procure information, should settle the jury lists? — I never heard the proposition before until I heard it from the honourable Member for Cork, but I see no objection to it; however, all the evidence last year, as I heard, was for giving the revision to the chairman alone.

1445. Under the present system have you the assistance of the magistrates when you revise the lists?—No, they have nothing to do with it; and there may be reasons why they should not in times of excitement; some may be for having on men considered to be of their views in politics, or for other reasons, and others may oppose. I am afraid that would be like the licenses about which I have had extraordinary noisy scenes in other counties. I would prefer the plan which I have myself mentioned.

The O'Conor Don.

1446. With regard to exemptions from service upon the juries, have you ever considered the claim of vice-consuls to be exempted from serving? —No, I think we have none in counties in Ireland.

1447. Do you think if there were any they would have a claim for exemption?—I do not know their duties; if they are merely like mercantile men attending in the office occasionally, I do not see why they should not attend as jurors.

1448. Except that the subjects of foreign states might be put to inconvenience, might they not?—If they came in and told the judge that there was any pressing circumstance, such as to call them elsewhere, he would secure them.

Mr. *Mulholland.*

1449. You said that, in your opinion, no rating qualification would be a guarantee for intelligence?—Just so.

1450. Did I hear you say that in many cases many of the highest rating qualification have been rejected in your court?—No, not rejected; but I have found them incapable as jurors when serving.

1451. That is to say, after they have been put on?—Yes, after they have been put on.

1452. In those cases in which you complained

Mr. *Mulholland*—continued.

of the acts of the juries, Mr. Herbert asked you if it did not show great anxiety on the part of the jurymen to do justice; but your complaint was not of any moral deficiency, but of an intellectual deficiency, was it not?—Yes.

1453. They were incapable of appreciating the evidence?—Yes, they were incapable of understanding circumstantial evidence; they would require more than one witness to prove anything, perhaps, they have such curious ideas.

1454. Under any system of revision by the magistrate, could such men be excluded?—I do not see how the magistrates could go into that.

1455. That is to say, unless they had a large discretion?—Just so. My opinion is that it would be better to concentrate the power in one court, though I see no particular objection to giving small powers to the magistrates.

1456. Was there anything in the appearance of those men to indicate their incompetence?—No, they are most respectable men. I know a man who has bought 10,000 *l.* of property in Limerick, and I have reason to know that he lives in a most wretched and penurious way, and he can hardly write his name.

1457. Would the chairman be naturally acquainted with all such cases?—No; nor would anyone raise the question, because that would be a great insult to the person.

1458. That is an extreme case; but many cases might, probably, be known and put aside by the magistrate or the sheriff where the men were incapable of weighing evidence?—Yes, the magistrate could do that; but a great many of them would rather not be unpopular. With regard to the lists of jurors that come for revision before the magistrates, and then before the chairman, I think in every case where a poor rate collector, or a clerk of the union complained of a man being unfit, he ought to put a mark against his name, not "objected to," because that would offend people, but an asterisk or "query," so as to direct the attention of the court to it; it would be a great improvement.

1459. You admit that as far as possible if those men who are unfit were excluded before they came into court, it would be a good thing?—Certainly, it upsets the course of business; if the petty sessions system were adopted, there would be three modes; first, the magistrates at petty sessions; next, the chairman; and then the judge in court.

1460. But that could not be done unless you vested a discretionary power with some one, could you?—Just so; the chairman might do it if any satisfaction could result from it; but unless some parties were put actively in motion to bring them before the chairman, would that not be the result. There are men that ought to be rejected by the chairman; supposing a man is known for his Fenian proclivities or his disaffection; he might be a shopkeeper or he may be a merchant dealing with farmers and so on; those men, by making disloyal speeches, become the heroes of the country and obtain thereby a large business, though their expressed opinions may not be sincere. My knowledge of the more active of those seditious men is that they become rich by it. If a juror finds an unpopular verdict he may lose his business. That is one of the reasons for having a better class of men. In a late case I know of a very respectable farmer who gave evidence on a land

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Mr. *Mulholland*—continued.

case in favour of the landlord against the tenant. They brought him before a farmer's club and proposed to expel him. Letters were written in the newspapers, and he has been obliged to defend himself at the club, and is held up to public indignation; and the way in which he was threatened was extraordinary. When a man of that class is threatened, what must it be with a poor man?

Mr. *Mulholland*—continued.

Mr. GEORGE BOLTON, called in; and Examined.

Mr. *G. Bolton.*

Chairman.

1461. I BELIEVE you have had a good deal of experience in defending prisoners in the county of Tipperary?—Yes, I had a good deal of experience up to the year 1852.

1462. In the year 1852 you were appointed sessional Crown solicitor in the county of Tipperary, were you not?—Yes.

1463. And from that year to the year 1868 you assisted the Crown solicitor in important trials in that county?—Yes; I continued to be sessional Crown solicitor up to 1868, and it was part of my duty to assist the Crown solicitor at the assizes when he required my assistance.

1464. In the year 1868 you were appointed Crown solicitor, were you not?—Yes, I was appointed Crown solicitor in the year 1868.

1465. What is your opinion with reference to the working of the present law as to juries in Ireland?—My opinion is that it is very unsatisfactory.

1466. Will you be kind enough to state to the Committee in what respects you think that it is unsatisfactory?—The class of men who are summoned as jurors under the present system, I do not think possess the intelligence or experience, or position, which qualifies them to discharge their duty as jurors.

1467. From what class are the juries in the county of Tipperary principally taken?—Under the present system, they are taken from a very low farming class, farmers occupying very small farms, and they contrast very strangely with the previous jurors, who I think I may say it is the opinion of the Bench and the Bar were scarcely second to any jurors in the kingdom.

1468. Can you state any facts relating to the panel of jurors summoned at one of the assizes previously to March 1873?—It is the duty of the Crown solicitor to make himself acquainted with the jurors, who they are, and what districts they come from, their connections and so on, and it is part of his duty to put them aside, if he has reason to suspect that they are biassed either from coming from the same district as the prisoner who is being tried, or connected with the parties, or any other cause of that kind. Previously to the year 1873, I was pretty well acquainted with all the jurors in the county, and knew almost every man that was summoned, but in 1873 a panel was returned consisting of 120 jurors. It was given to me at the assizes, and I tried to obtain information about those men from the ordinary sources; I tried to obtain information from the sub-sheriff, the constabulary, and the magistrates, but between us all we could only recognise 23 persons out of the whole number that was at Nenagh.

1469. Can you state to the Committee any facts that occurred in the course of those assizes which led you to form an adverse opinion to the system then prevailing?—Yes, one of the first cases on trial was that of a man tried for manslaughter. Before the trial had gone far, we discovered one man on the jury more than half drunk, and one that had just come back from seven years' penal servitude for cattle stealing. The evidence was very clear, the judge's charge was very clear, but the jury disagreed, and they would not find him guilty. The man by his counsel applied to be bailed out to take his trial at the next assizes. The Chief Justice refused the application, whereupon his attorney told me that the prisoner would plead guilty, and he did plead guilty next day.

Chairman—continued.

The O'Donoghue.

1470. Were they all men of the same class on that jury?—Yes, certainly. That was at the spring assizes in Nenagh before the amended Act was passed.

Chairman.

1471. Can you state any other cases at the same assizes of a similar kind?—Yes; the next case was a man who had been very badly assaulted on going home in the evening quietly, and it came out in evidence (we had only his own evidence) he was going home in a cart, and a man whom he knew very little of, though he knew something of him, wished to get on the cart; he refused to let him; he did not like the man's character; the man took up a stone and gave him a very severe fracture on the head without the slightest cause for it; he identified the man but the jury acquitted the prisoner. The next case we tried was that of a labouring man for an assault on a young girl who was about 17 years of age, on the road, with intent to commit a rape; the evidence was very clear; he was caught in the act, and the girl was screaming, but the jury only found the prisoner guilty of a common assault. The next case was where a party of men went to the house of the prosecutor in the town of Roscrea, and commenced shouting for him: he went out to see what it was all about, and they knocked him down with stones, fractured his head, and his life was in danger for a long time, but the jury only returned a verdict of common assault; that was the working of the Act in those cases. At those assizes we had very few cases. We then proceeded to Clonmel. I am still speaking of the spring assizes. The county is divided into two ridings, north and south; the assizes for the north are held at Nenagh, and the assizes for the south are held at Clonmel. At Clonmel we had 120 jurors on the panel; they were all about the same class, and equally obscure; we could not trace anything about them; some of them came from the mountain district, and for a very long time the Chief Justice was occupied in hearing applications from jurors, who wanted to go home to sell a pig, or something of that sort. They could not support themselves while in the town, and

Chairman—continued.

and they wanted to go home. The most important case at the Clonmel assizes was the case of John Butler for the murder of his wife; the trial occupied two days, and the jury were locked up at night, but on the second day, after the prisoner's counsel had addressed the jury for the defence, the judge was about to charge, when one of the jury commenced addressing to him some very absurd questions. This drew attention to the juror, and it was found that he was perfectly drunk. A medical man was sent for to examine him, and he reported that he was so stupidly drunk that he could not understand what was proceeding around him. The result was that the judge had to discharge the jury, and the trial became abortive, after very considerable expense had been incurred.

1472. Can you refer to any other cases at the same assizes?—We have had one or two very bad acquittals. There was the case of a man who went into a shop where there were three men standing at the counter drinking; one of them knocked him down with a hammer, and the three men rushed out immediately afterwards. The jury acquitted in that case, although it was as plain a case as if they had seen it done themselves.

1473. Were there any other assizes held after that before the passing of the Act of 1873?—No; the Act was amended before the summer assizes of 1873.

1474. You have been put to considerable expense at the Tipperary assizes for some years past?—Yes.

1475. Do you consider that in any of the cases to which you referred in the spring assizes of 1873 there was a worse failure of justice than had happened in former years?—Yes, it was my opinion, and I think the opinion of the court, and the barristers and the public generally, that such failure of justice would not have occurred under the old system.

1476. Now, can you tell the Committee what was the effect in your part of Ireland of amending the law of 1873?—As far as the county of Tipperary is concerned, I should say it is hardly perceptible. The class of jurors is identically the same. The increase in the rating value made scarcely any change.

1477. Can you kindly inform the Committee what is the difference in the numbers of the jury list before and after the passing of the Act of 1873?—Previous to the year 1873 the jurors' book for the entire county was 1,551, I think: it is now something close upon 6,000.

Mr. *Law.*

1478. You mean that before the passing of Lord O'Hagan's Act it was 1,500?—Yes, before the passing of Lord O'Hagan's Act, before 1872.

Chairman.

1479. You state that before the passing of Lord O'Hagan's Act it was 1,551, but after the passing of Lord O'Hagan's Act it was close upon 6,000?—Yes.

1480. But after the amending Act of 1873, what was it?—Five thousand five hundred and seventy-two.

1481. How many jurors should you consider sufficient for each riding of your county?—I think that 1,000 would be more than sufficient; 1,500 did the business for the two ridings formerly, and I should say 2,000 would be ample for the two ridings now.

Chairman—continued.

1482. Including the quarter sessions and the assizes?—Yes, including the quarter sessions and the assizes.

1483. Including the grand jury also, I suppose?—Yes.

1484. Do you think it is advisable that the grand jury should still be summoned at quarter sessions?—I have a very strong impression that grand jurors should not be summoned at quarter sessions; in my experience I never knew a case where the slightest value, either to the Crown or the prisoner, has resulted from the grand jury; it is a matter of form; the witness must go before a lot of gentlemen, who know nothing of the case, they have no legal assistance, they ask a few questions, and they send the case for trial. In my opinion it is a mischievous thing to have them, because in a limited district 23 of the best men are withdrawn from the trial of the cases before the court, and shut up in the grand jury room.

1485. How many quarter sessions are held annually for the county of Tipperary?—Sixteen.

1486. How many grand jurors would be summoned in the whole?—Sixteen times 23.

1487. I suppose that your opinion that the grand jury might be dispensed with, would not extend to the assizes?—No, I would be disposed to continue them at the assizes, because great constitutional questions may arise between the Crown and the subject in those courts.

1488. Now to return to the assizes immediately following the passing of the amending Act of 1873, can you state anything that happened on that occasion?—Yes. We had very little business at the Nenagh assizes; the chief case was against a man named Michael Toohy, who was charged with the manslaughter of Mrs. Kennedy. The jury disagreed in the matter, and the prisoner was bailed out, and then he fled the country. We had only five cases at those assizes.

1489. Were there any special circumstances under which the jury disagreed?—The Crown thought the evidence very plain against the prisoner. After each assize I must report to the Attorney General the result of the trial, and I have got a copy of my return here upon this case: "Jury disagreed; the case was sent to them as for manslaughter; the facts were exceedingly plain, and were not disputed. On the evening in question the prisoner went to John Fanning's house, in the town of Roscrea, and commenced shouting for him to go out to fight; Fanning went to the door with a pitchfork in his hand, but did not go out, and prisoner threw several stones at him, one of which struck him; another struck Mrs. Kennedy, who was in Fanning's house, on the head, and knocked her insensible on the floor, and she died in eight or ten days after. The doctors proved the blow might not have killed a strong person, but that Mrs. Kennedy being in delicate health, it accelerated, if it did not actually occasion, her death; this was not contradicted. The meaning of the word 'accelerated' had to be explained to the jury by the judge, and I doubt if they all understood it after his explanation; but at all events, they did not agree, and were discharged, the prisoner being kept in custody." These facts were distinctly proved. I tried afterwards to find

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Chairman—continued.

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find out how it was possible that the jury could have had any difficulty, and some of the jurors said that they thought that the stone was not intended for the woman, but for Fanning.

1490. Can you refer the Committee to any other case at the same assizes, or the next assizes?—Then came the Clonmel assizes, but I have nothing particular to say with reference to the Clonmel assizes. The summer assizes, both of Nenagh and Clonmel were very light, with one exception. My attention was directed by the constabulary, and by the magistrates, and the public at large, to the fact that the jurors, the prisoners, and the witnesses were all staying together in the same class of public-houses and lodging-houses, and on passing through the town from time to time I saw that that was so; I saw the jurors and witnesses in groups round the public-house doors, and also in the streets. This is a matter which attracted very general attention. We then come to the Clonmel assizes in 1874, and we had rather a larger number of cases for trial, and a great number of exceedingly bad verdicts.

1491. Were the jury, on that occasion, from the same objectionable class?—Yes; there has been no change in the class of jurors since the amending Act.

1492. Will you be kind enough to state the facts with reference to the Clonmel assizes in 1874?—The first case to be tried at the Clonmel assizes was that of a man named John Ryan charged with an assault on William Grace. Grace was coming home from the races near Tipperary, accompanied by his two sisters, and when passing through the town he was set upon by a large number of men, who attacked him with sticks and stones, knocked him down, and he was so severely beaten that his life was in danger for a very considerable time. That was in broad daylight. Grace was perfectly sober and knew the parties. He swore distinctly against the prisoner. The sisters of Grace also swore distinctly that the prisoner was one of the men The constabulary proved that on the night in question the prisoner fled the country, and kept away until the man's life was out of danger. Grace was a most respectable young man; he was being educated for the priesthood, and was perfectly sober. A gentleman, who is now in the Committee Room, was the barrister who defended, and, as usual, raised the question that there might possibly be a mistake of some kind. Baron Dowse charged the jury, and he said that in all his experience he never knew a case in which prisoner's counsel did not introduce the question of doubt, and that it was quite right to give the prisoner the benefit of the doubt where any grounds for it existed, but that the jury would be very much cleverer than he was if they could find any doubt in that case, for he could see none. I was sitting under the baron, and the jury box was very convenient to us; and heard the words, "Not guilty," passing among the jurors from one to another as soon as the charge was finished. The baron heard it, and he said, "What are you going to do? Retire and consider the evidence before you find such a verdict as that." The jury did so, and in about 10 minutes came in with a verdict of "Not guilty." The baron said, "Mr. Crown solicitor, take care not to allow one of these jurors to serve again during these assizes." Which

Chairman—continued.

was, no doubt, as strong an expression as possible of his opinion of the verdict.

1493. But considering the general composition of the jury panels, would you consider that measure of much use?—Not the slightest, and I told Baron Dowse so; "they are all the same class, and putting them by is of no value." He said, "Well, it is an expression of dissatisfaction with their conduct."

1494. Did any other similar case happen at the assizes?—The next case was that of a woman who was so badly beaten that she was left for dead on the road, having received several fractures; the parties were caught in the act, and the jury found them guilty of common assault. In another case the husband and wife were going home together, and they were attacked by some fellows and fractured by them; in that case we fortunately divided the trial; we sent up a hill for the attack on the husband, and we sent up another for the attack on the wife; the jury who tried the husband's case acquitted the prisoner: the next day we tried the same parties for the attack on the wife, which was exactly the same transaction, and we fortunately got one or two respectable men on the jury, and they found the prisoners guilty without leaving the box; that was as clear a case as possible.

1495. Have you found a general disposition among jurors to convict merely for common assaults in place of serious assaults?—It is scarcely possible to obtain a conviction for anything but common assaults, no matter how clear the evidence may be, or how great the injury done to the prosecutor.

1496. How would you suggest that any improvements might be effected in the jury system?—The only thing is, if possible, to try to get a better class of jurors. I have thought it over, and spoken to a great many persons on the subject, and the best suggestions I can find are embodied in a paper which I have before me. The first thing will be to ascertain what number of jurors are required for each county, and having ascertained that, I would say that the qualification should be, "1st. Sons of peers, baronets, knights, justices of the peace, esquires, and their respective sons; merchants, whether sole traders or members of a firm; directors of any banking or public company, and managers of any bank or local branch thereof,. and graduates of any college in Great Britain or Ireland. 2nd. All persons seised or possessed of a clear annual income of 50 *l.* or upwards, arising from lands, tenements, or hereditaments, for whatsoever tenure held, and all possessed of personal estate of the clear value of 1,000 *l.* 3rd. Every person who in his own name, or as a member of a firm, shall be rated at an annual sum, which, as regards each member of the firm, shall amount to the annual valuation of 50 *l.* or upwards in a city or town. 4th. All persons who in a county, city, town, or borough shall be rated on an annual sum of 20 *l.* or upwards."

1497. Must they be residents?—That is essential, of course. I would say that with regard to the disqualifications, they should be, "1st, all persons over 70 years of age; 2nd, all persons who cannot read and write the English language; 3rd, all persons suffering from lunacy, imbecility of mind, deafness, blindness, or other infirmity that would in any way interfere with the effectual discharge of his duties as a juror; 4th, all persons

Chairman—continued.

persons who have been convicted of treason or felony; 5th, all publicans and persons carrying on small provision trades." I would be, of course, particular about publicans, because they get their income from the small class of people; you cannot depend upon them, and they are not fit to be allowed to serve. And I would also disqualify all habitual drunkards.

1498. Those you suggest as disqualifications?—Yes, those I suggest as disqualifications.

1499. Now I understand your idea to be that a certain number should be fixed, which number might be considered a sufficient jurors' list for the whole of the county?—Yes.

1500. And that that number should be composed of the three first classes which you have named?—Yes, so far as they are available.

1501. And that they should be made up out of the fourth class?—Yes, they should be made up of the fourth class, taking the highest rated value in the fourth class as a general basis.

1502. How would you go on to suggest that the list should be framed?—I would suggest, first, that the barony constables should in the month of September in each year furnish to the clerks of each petty sessions district lists of the persons in such district qualified; second, that the petty sessions clerks should submit such lists to the magistrates at the first petty sessions to be held for such district in the month of October, not being later than the 15th of October, and that if necessary the clerks of petty sessions should issue circulars convening a special sessions for the purposes of the inspection of such lists." In the event of the sessions not being held within that time I would have a sessions convened. I would have the lists examined by the magistrate, and let them make their observations upon them, and they should then be returned to the clerk of the peace. I would then have a special sessions convened by the chairman in the month of November for the purpose of the general revision of the lists; that is a sessions specially for the purpose quite distinct from ordinary sessions, and at which no other business should be done.

Marquis of *Hartington.*

1503. It is not a petty sessions that you mean, is it?—No, it is a general sessions; at that sessions I would require the chairman to attend, and I would give the magistrates power to attend also; but I would insist on the chairman attending, on account of his legal knowledge. The constabulary should also attend, and he at liberty to make objections if they thought anyone unfit to have his name on the list; and then I would have the list revised, and have that list put into the jurors' book.

Chairman.

1504. You would thus have before the general sessions a list comprising the whole of those four classes which you have mentioned?—Yes.

1505. And leaving it in the power of the general sessions to leave as many out of the fourth class of jurors as were not needed for the county?—Yes.

1506. Would you propose to take from the fourth class simply those who were the highest rated?—No, I would give the magistrates or the chairman at the sessions a discretionary power. It sometimes happens men may be highly rated, and yet unfit to be jurors.

Chairman—continued.

1507. What amount of discretionary power would you propose to give?—You must leave a general discretionary power to say whether the juror is fit or not.

1508. That is to say, you mean that out of the fourth class you would leave to the chairman and magistrates at the general sessions the power to select a sufficient number of the names which seemed to them best?—Yes; it would come to that. You cannot well fix a limited discretion; it must be a general discretion.

1509. Do you think that that power would be looked upon with confidence by the country?—I may state as a matter of fact that the great bulk of the public are greatly dissatisfied with the present constitution of the jurors' list. When I say the great bulk of the public, I mean the respectable, hard-working class who have something to lose I think, however, that they would be perfectly satisfied with what I have suggested.

1510. Then having thus framed your list, what would be your next proceeding?—Then comes the question of arranging the panels for the assizes and sessions, and of summoning the jurors. It comes to a question of selection, and whether that power should exist or not. I think that the power of selection ought to exist, and that it should be left with the sheriff. I certainly do think that jurors ought not to be harassed unnecessarily, and that each man should take his turn, and with that view I would not summon the same men twice in the same year, unless there was some very special reason.

1511. What power of selection from the jury list would you think expedient to give to the sheriff?—I think he might summon as many as had not served in the same year.

1512. How would you propose to have the summonses served?—Unquestionably by the constabulary, and for two reasons: first of all, they would be certain to reach the jurors' hands; and secondly, the constabulary would be in a position to report to the Crown solicitor if any improper person was summoned; they could tell the Crown solicitor that such and such a juror was connected with the parties, or they could state any other special reason against his serving.

1513. Would you propose to have any payment made to the sheriff?—Yes, it would be very unreasonable to ask him to discharge those duties without some payment. At present the sheriffs are very large losers by having to summon juries; the salary paid to those officials does not cover the expense, and they complain very much of this. I have heard it stated to-day, that the fact of the sheriffs not being paid induced them to endeavour to summon juries as cheaply as they can, and that they often summon men living in the immediate neighbourhood for that reason. I think they ought to get some moderate payment.

Mr. *Bruen.*

1514. You spoke of the "official salary of the sheriff;" what does he get?—I think he gets in my county about 92 *l.* a year.

1515. Is that from the county?—Yes.

Chairman.

1516. You are speaking of the sub-sheriff, are you not?—Yes, I am speaking of the sub-sheriff.

Mr. *G. Bolton.*

18 May 1875.

Mr. *G. Bolton.*

18 May 1874.

Dr. *Ball.*

1517. If there was no grand jury at the court of quarter sessions, you would not leave the power of putting men on their trial with the session solicitor, would you?—No, I would have the informations submitted for the sessions, as they are for the assizes, to the Attorney General. I am quite certain that the parties would be perfectly safe under his fiat. I do not really know what business the grand jurors at sessions do to facilitate the administration of justice.

1518. A man should not be put on his trial without some examination by a competent authority with reference to the propriety of putting him on his trial, should he?—I quite agree with that; but the grand jurors at sessions are, in my opinion, perfectly incompetent to sift the evidence.

Mr. *Downing.*

1519. There are very serious cases tried at the court of quarter sessions, are there not?—Yes, there are.

1520. And a man may be sentenced to penal servitude for 20 years?—Yes.

1521. If you get rid of the grand jurors at the court of quarter sessions, would you propose to get rid of them at the assizes?—No, I would not, for the reason which I have mentioned, namely, that great constitutional questions may arise between the Crown and the subject; and I would maintain the grand jury there as a safeguard to the liberties of the subject; of course that difficulty is not likely to arise, but it is a matter of theory.

1522. I think you have stated that you would like to have a better class of jurors than you have found generally in the county of Tipperary since the passing of Lord O'Hagan's Act?—Yes.

1523. I understood you to say that you would have four classes: first sons of peers, baronets, knights, justices of the peace, esquires, and their eldest sons, and so on?—Yes; I merely name those as the classes to select from.

1524. In the next place you stated that you would have persons who had a clear income of 50 *l.* a year?—Yes.

1525. In the next place, persons who have personal property of the clear value of 1,000 *l.*?—Yes.

1526. And then you would have those who are rated at 20 *l.* a year?—Yes.

1527. Would you propose to take a certain number from the first class?—No, I would take all I could get.

1528. Suppose you had 500 of that class?—There is no chance of any such number.

1529. No matter what number it is, you say that there would be 2,000 needed for the county of Tipperary, namely 1,000 for each riding?—Yes, 1,000 for each riding.

1530. You have given the Committee a plan by which very few could remain on the list when it was returned to the clerk of the peace, after the revision which you propose, have you not?—I think it would be pretty well winnowed.

1531. Very closely?—Yes.

1532. But still you would give the sheriff a power of selection?—Yes. What else can you do if you make each man serve in turn? I say that the sheriff should only summon a man once in each year.

1533. The sheriff can only take them alphabetically now, can he?—Just so, and it is a very great mistake; I am told by the sheriff that in Tipperary at the next assizes but one we shall have only Ryans on the panel.

Mr. *Downing*—continued.

1534. Have you seen a return handed in by by Wilkinson, a sub-sheriff?—No; I have only seen the English Jury Bill within the last hour, and nothing else.

1535. If there was a system by which the large preponderance of names could be arranged there would be no objection to the alphabetical order, would there?—I see no use in it, and I think it is mischievous to have it in alphabetical order, because certain names do so preponderate that you could not equalise them.

1536. But Mr. Wilkinson suggests a plan which puts them in columns of 100 each, and strikes off the names according to the letter; have you seen that suggestion?—No, I have not.

1537. As I understand your evidence, you would not give the sheriff power to omit any names from the panel?—Certainly not.

1538. Then would you let him select persons for a particular trial?—No; I would put the book into his hands, and I would say, "Select the jury from that book for the assizes," and the sheriff having done that, at the following assizes I would say to him, "Give me 120 new names."

1539. Would you give him that power of selecting 120 names in order that he might select the best names on the panel?—Yes.

1540. And at the next assizes also, I suppose?—Yes.

1541. Then at last you would have the very worst jurors, would you not?—No; the sheriffs up to the present time when they have had the power, have mixed the panel fairly.

1542. But now the panel is settled by the court below, under your plan, is it not?—No; I spoke of the jurors' book being settled by the court below; but the panel for the assizes is quite another thing.

1543. Would you allow the sheriff to make his panel from the jurors' book?—Yes.

1544. That is to say as he did before?—As he did before.

1545. You know, do you not, that men of the highest experience have offered adverse opinions on this matter?—I have read very little on the subject, I am sorry to say.

1546. Why would you propose to exempt small provision dealers from service?—Because they are too dependent on the general public for their support.

1547. Would not that apply to all the small shopkeepers?—Yes.

1548. Would you think it advisable to exclude them all?—I think they would be excluded by the system which I propose; very few men coming under that class would be rated at such a sum as I suggest.

1549. Then there is no occasion for a disqualification, is there?—If it so happened that a publican was rated so as to bring him within the qualification, I would strike him off, and I would do the same with the small provision dealers.

1550. If he was rated under the Act at 12 *l.* a year ought he to be struck off, in your opinion?—Yes; you could hardly expect that a man of that kind would be free, and it would not be fair to himself to put him on a jury.

1551. With regard to a man who lives in a town, rated at 12 *l.* a year, and who sells clothing, and

Mr. *Downing*—continued.

and so on; is not he a fit man to be on a jury?—I have not referred to that class at all; some of our best jurors come from that class; but I said some of the small provision dealers who keep stores for the sale of potatoes, bread, and so on.

1552. You would have them exempted from serving, would you?—I would not allow them to serve.

1553. Have you not found that the best and most intelligent jurors are generally found in the towns?—No, I have not, except a few respectable shopkeepers, and my experience is that the class I refer to are neither intelligent nor are they free to act as they ought on juries.

1554. Of course gentlemen in the position of Crown solicitors form very strong opinions, and take very strong views of cases in which they are employed, do they not?—Sometimes, no doubt they do.

1555. Their minds are open to be biassed, as well as those of any other class of people, I suppose?—Of course they are not infallible.

1556. I might think that a verdict was a very good one according to the evidence, and you as the prosecutor might differ from me, might you not?—No, I think there would not be the slightest difference of opinion between us.

Mr. *Bruen.*

1557. The power of selection in forming panels from the jury book is necessary, is it not, in order to distribute equally and evenly the burden of service?—I think so.

1558. For instance, a man coming from a long distance, and serving for perhaps five or six days, far away from his home, suffers a greater burden than a man who comes from close to the town, and serves for one or two days?—Yes, certainly.

1559. In order to distribute the service equally, those two men should not be put on the panel exactly in the same rotation, should they?—Not exactly; I think that I would leave a general power of selection to the sheriff without reference to that. It sometimes happens that it is desirable to get men who live close to the town.

1560. Exactly, and in order to do that it is necessary to put that power into the hands of the sheriff, is it not?—I think it would be very desirable.

1561. Have you read the Bill now before the House of Commons, which was brought in by Mr. Lopes?—I have only glanced through it within the last couple of hours.

1562. Let me call your attention to Clause 62 of that Bill, which refers to summoning the jury panel by the sheriff; what do you think of that section?—That comes very close to what I suggest.

1563. If such a clause was passed in the English Act, do you think it would be a good provision to extend to Ireland?—I think it would be very desirable to have the laws assimilated as closely as possible; and that is the general feeling of the public at large.

1564. Did you hear the evidence given by Mr. Leahy, the last witness, with respect to the number of jurors which would be sufficient for forming the panels at the quarter sessions and at the assizes?—I heard part of his evidence.

1565. He said that 50 was a sufficient panel for the quarter sessions, did he not?—Yes, that would be about it.

1566. And 100 for the assizes?—Yes. Of course it depends on the county and the business to be done; but say from 100 to 150, including grand jurors and special jurors.

Mr. *Bruen*—continued.

1567. Do you agree with Mr. Leahy that it would be a dangerous thing to take jurors from the district in which outrages have occurred, and to select from those districts the panels to try offences committed in those districts?—Yes, I quite agree with that. In practice I invariably put aside jurors coming from the district or vicinity where outrages have occurred.

1568. Would that necessarily also involve a power of selection being placed in the hands of the sheriff?—I cannot see how that follows, because that is a question of putting by jurors when they come to be sworn.

1569. But at all events it involves the alternative of exercising very largely the power of getting them to stand aside, does it not?—Certainly.

1570. One of the two things is necessary?—I think the power of ordering them to stand aside is necessary in Ireland; you may as well give up all criminal trials by jury if that is not done.

1571. Have you had to exercise that power lately more than before?—No, because I find it useless. At the last assizes of Clonmel we had 16 acquittals, and 14 of them were as bad acquittals as could be pronounced; and if any good could have resulted from putting by jurors, I would have put by a large number; but I found, on looking at the panel, I had precisely the same class to deal with, and there was no use in putting any by. On that question of putting by, I may mention that I have very often put by within the last 20 years men of very good position in the county, very respectable men; occasionally there has been some cavilling, but in almost every case I have done it in consequence of those men coming to me and saying they had been canvassed by the prisoners or their friends, and begging me as a favour not to let them serve. I have said, "You place me in a false position in asking me to put you by, why not stay away;" and the general reply was, "We dare not stay away; that would be just as bad as convicting."

Mr. *Plunket.*

1572. Were you forced to make those men stand aside after all?—Yes; they came to me and begged me before the trial to put them aside.

1573. There is one question which I wish to ask you, about preparing the jury lists. It has been suggested that after the lists are first made out, and before they are in any way revised by any tribunal, they should be printed and posted in the various districts; what is your opinion on that point?—I think that it would be a very unnecessary expense. The fact of their being submitted to the magistrates at petty sessions would be quite sufficient.

1574. You think that the petty sessions district is sufficiently small to do away with the necessity of such an expense as that?—Yes; I think that the magistrates of the district would know every man whose name was returned on the list.

Mr. *Verner.*

1575. Do you not think that having those lists brought to the ordinary petty sessions there might be a danger of its becoming a mere formality?

Mr. G. Bolton.

18 May 1874.

Mr. *Verner*—continued.

Mr. *G. Bolton.*

18 May 1874.

mality?—I would follow that up by having a special sessions; I would merely send the lists to the petty sessions at first in order that the local magistrate might see them; they would then go to the clerk of the peace, and then a special jury sessions would be fixed to deal with them.

Mr. *Law.*

1576. You have mentioned that the present system you thought was, to some extent, unsatisfactory, as jurors did not possess sufficient experience among other things?—Yes, and not sufficient intelligence.

1577. Intelligence, experience, or position were your words?—Yes.

1578. Do you lay any stress on their want of experience?—No; I think that no teaching would qualify the majority of them to serve as jurors.

1579. Where did the jurors before Lord O'Hagan's Act came into operation come from; from what districts were they summoned?—They were generally summoned from the whole riding.

1580. Had you the same jurors coming constantly to try the cases at that time?—Very frequently we had the same men.

1581. They were trained men, in fact?—Yes, they were educated, intelligent men, able to reason on the facts

1582. In the case which you mentioned as occurring at the Nenagh assizes of March 1873, the manslaughter case, you said that the jury contained one juror who was drunk?—Yes, there was one juror who was drunk, and another was just home from penal servitude.

1583. Did it never happen within your experience that a juror under the old system was found to be tipsy?—I never saw a case of that kind

1584. Was not it simply an accident that you did not observe that the man was drunk?—Yes, it was simply an accident, of course.

1585. You know, too, that under Lord O'Hagan's Act, conviction for felony was made a disqualification for serving as a juror?—Yes.

1586. So that a sheep stealer or a cattle stealer remaining on the list shows that there was default with some of the parties charged with the revision?—Yes, but I mention that to show that the jurors are taken from such a low class that there was even among them a man who had just returned from penal servitude. I had the local constables of the district with me, and we went through the list of jurors together, but they knew nothing about him.

1587. If the collector had done his duty would not he have informed the court of revision of that fact?—Possibly he knew nothing about it.

1588. I thought you said that the collectors knew nearly everybody?—Sometimes they do, and sometimes they do not.

1589. You found another drunken man on at Clonmel; did you never see a drunken man amongst the jurors before Lord O'Hagan's Act came into force?—No, I never saw one serving on a jury before.

1590. No, I do not mean serving on a jury, but among the 1,500 men on the books; in the old days did you ever see a drunken man amongst them?—I saw one gentleman drunk on one occasion; he came into court.

1591. Did you put him aside?—No; he was

Mr. *Law*—continued.

taken away by his friends That is the only case which I recollect in all my life.

1592. As I understand you, you propose that the magistrates at special petty sessions should make remarks opposite the name of each person?—Yes; I would give them an opportunity of doing so, if they please.

1593. And you would have the lists sent to them for the purpose of furnishing the chairman with sufficient information to revise the lists?—Yes.

1594. Would there, in your opinion, be any danger of the magistrates neglecting their duty and letting this drop into a matter of form?—Not for a very long time to come; they are now alive to the matter.

1595. Did they revise the list very carefully in Tipperary under the old system?—No, because there was no great occasion for it; nothing arose to attract their attention to the matter.

1595*. It went on pretty smoothly for several years?—Yes.

1596. Your object would be to get the special knowledge of the local magistrates for the benefit of the chairman?—Yes.

1597. Did I understand you to say, that after the lists had been thus revised the sheriff should have any power of selecting jurors, so as to exclude any of them from ever serving at all?—Certainly not; I assume that every man who would be on the book would be qualified.

1598. They must all serve in turn?—Yes, some time or other.

1599. With regard to the difficulty about having the lists in alphabetical order, did you happen to read the evidence given last year by Mr. Murland?—No.

1600. He proposed that all the names on the revised lists should be balloted for; that they should not be placed on the book in alphabetical order, but in the order in which they came up by ballot, and that the sheriff should take them in the order in which they then stood?—I think that would be too late.

1601. The names would thus be arranged in the book not in alphabetical order, as they happened to come up in the ballot, mixed up, in fact; would not that get rid of all the difficulty about the Ryans and the Murphys?—It might or it might not; a number of those men might come out together.

1602. Or you might get over that difficulty by taking the names according to the proportion in which they occurred, might you not?—I think that that would be a very bad arrangement indeed.

1603. However, if the difficulty about the alphabetical order could be got over by any other mechanical arrangement, you would not object, I suppose?—My feeling would be to leave the sheriff the power of arraying the panel from the jurors' book.

1604. Provided he eventually got through the whole of the book?—Provided he eventually got through the whole of the book.

Marquis of *Hartington.*

1605. What class of persons were those juries with whom you found fault?—The majority of them were small farmers, occupying 10, 20, or 30 acres of land, and 50 acres some of them, but they were men who were not accustomed to any large business transactions. One of the barristers used

Marquis of *Hartington*—continued.

used the expression that some of them were not used to wearing shirts until they came to the assizes.

1606. At the last assizes there cannot have been any jurors who were farming 10 acres of land only, I suppose?—There might have been such cases.

1607. They must have been rated at over 30 *l.*, must they not?—Yes; some of the land is valued at 2 *l.* or 3 *l.* an acre.

1608. Do you mean in the immediate neighbourhood of Tipperary?—Yes.

1609. Do you think that by increasing the qualification you could get from the farming class a sufficiently intelligent body of jurors?—I would be very sorry to depend altogether on the farming class to supply proper jurors for such a county as Tipperary.

1610. But under this system, whatever qualification you take, the majority would come from the farming class; if it is purely a rating qualification, I mean?—If it was purely a rating qualification the great bulk would be the farming class; therefore I would not suggest that as the only qualification.

1611. From what you say about some of the verdicts, I rather gather that it was not only want of intelligence that you complain of; was it not something more than want of intelligence?—Yes, a great deal more.

1612. What should you say that it was; how should you describe it?—It is very hard to describe; in some cases it was sympathy with the accused, and in some cases the jurors were influenced by being canvassed by the friends and relatives of the prisoner. The common cry now with regard to jurors when they are being called to serve on the jury is, "Go in and free the boys." I have been told by a very respectable attorney, who has large experience in defending prisoners at the assizes, that this is a common phrase.

1613. The cases in which you complained of the verdicts were chiefly assault cases?—Yes, they were principally assault cases. I should say that the present jurors are ready enough to find verdicts in larceny cases and small robberies.

1614. But they seem to have had notions that an assault was not a very serious crime?—Precisely so; that is what I mean.

1615. With regard to the suggestions that have been put before the Committee, as I understand, you propose that the list should be submitted first to the magistrates in petty sessions?—Yes.

1616. But you do not propose, as I understand you, that the magistrates in petty sessions should have the power of striking off any names?—No.

1617. What objection would you have to the magistrates in petty sessions striking off the names if there was an appeal to the chairman in quarter sessions?—Because it is just as well to deal with it at quarter sessions; the magistrates at petty sessions might make a mark against any names that they objected to, and let the matter come before the general sessions.

1618. Would it not be simpler and more convenient that the magistrate should have the power of striking off the names at once if there was an appeal right?—It might be said that it was done from individual motives, or prejudice; it would be just as well, with reference to the magistrates themselves, that they should not do it. At the general sessions the parties would have an opportunity of being heard, and of course my suggestion is very general, but the parties should have notice, and so on.

Marquis of *Hartington*—continued.

1619. Your fourth class, as I understand, was to consist of all persons rated over 20 *l.*?—I say 20 *l.* to enable you to go low enough to get jurors in all the counties; but, taking 20 *l.* as the lowest, I would select the highest I could get.

1620. You would not need in Tipperary to go so low, would you?—Not nearly so low.

1621. Do you see any difference in the jurors who come from the country district and a juror who comes from the towns?—The jurors who come from the country districts, I think, were poorer and more illiterate, and a more inefficient class.

1622. Do you think that you could safely take a lower rated man, whose qualification was in a town than if he was in a country district?—There is a great difficulty about that subject; the low-rated men in towns are very often so dependent on the public for custom that I would be disposed to keep the qualification as high for the town as for the country.

1623. Do you not think that a 12 *l.* house is a sufficient qualification in a town?—I do not think it is; certainly not in Tipperary; there are large towns in that county, and houses of that class would be occupied by very humble people.

1624. What would a respectable shop in Tipperary be valued at?—Certainly 20 *l.* or 30 *l.*, and perhaps up to 40 *l.*

1625. Would they be rated at that?—Yes, rated at that. Tipperary is a large town; so is Nenagh; and so is Clonmel.

Chairman.

1626. Does the valuation in Tipperary represent anything like the rental?—The valuation of house property represents something near the letting value, but the valuation of rich lands in the county of Tipperary does not represent one half the letting value.

Dr *Ball.*

1627. You have good assize towns in Tipperary?—Yes, certainly.

1628. The greatest amount of the crime in Tipperary consists of crimes of violence, does it not?—Yes.

1629. And very often the sons of respectable farmers are engaged in those faction fights, are they not?—It is too often the case, I am sorry to say; they have too much money, and they go into the towns and get drunk; I should say that the Tipperary men, as a rule, do not consider faction fighting as a disgrace, but they look upon anything in the shape of larceny as an indelible disgrace.

Sir *Colman O'Loghlen.*

1630. With regard to the special jurors in Tipperary, are they at the present time a very intelligent class of men?—No, they are very inferior; I would be very sorry to try an important case before them.

1631. Are they fit to try heavy property cases, in your opinion?—No, they are utterly unfit. At the Clonmel assizes where the Duke of Devonshire was plaintiff in a fishery case, one of the jurors could neither read nor write.

Mr. *G. Bolton.*

18 May 1874.

Sir *Colman O'Loghlen*—continued.

1632. Was it a special jury?—Yes, it was a special jury; that juror had employed an attorney to get him excused, but the attorney was not in court.

1633. Were you in court?—Yes.

1634. Did any of those jurors complain of being obliged to listen to the speech of the counsel?—Yes; they were unfit to try the case; if it was proved by five or six witnesses that a man was knocked down and his head broken, they might understand it, but they are utterly incapable of trying a case requiring the exercise of reasoning powers.

1635. Was it said in the Duke of Devonshire's case by one of the jury, that his opinion changed according to the counsel he was listening to?—Yes.

1636. Has that system of canvassing jurors of late been more prevalent than it used to be?—It is becoming quite alarming in Tipperary; it has spread so, that I am informed that persons who are supposed to have influence are taken on cars round the county canvassing the jurors; I have been told that a great number in particular cases were canvassed.

1637. If canvassing jurors was made a misdemeanour, would that have any beneficial effect, do you think?—It is very difficult to get at it.

1638. Even if it were done openly in cars in that way?—That would be easier.

1639. To what do you attribute that; is it to the fact that jurors are men of the class to which the criminals belong?—Yes, that is the reason.

1640. Have you seen that in the Act which is proposed to be carried for England there is a provision to enable the Crown or the traverser to obtain a special jury to try a case?—Yes, I think that should be extended to Ireland.

1641. That is to say, getting special jurors to try a criminal case?—Yes, certainly.

The O'Donoghue.

1642. Would selecting the jury by ballot in criminal cases do away with canvassing?—No; because the summonses must be sent out a certain time before the assizes, and the jurors summoned become generally known by the parties in the district.

The O'Donoghue—continued.

Mr. *Mulholland.*

1643. You have stated that you would give a certain discretion to the sheriff in selecting names; would you not include the power to omit any names which, notwithstanding the previous revision, might have remained on the list in which a person was clearly unfit for the duty?—I would not like to make the sheriff a judge in the matter.

1644. Would you not be satisfied with such a clause as that in the English Jury Act in which the words are, "Summoned in as fair and impartial a manner as may be with due regard to the whole body of jurors"?—Yes, that is what I mean; if the case of a person clearly unfit to serve arises, let the Crown solicitor deal with it at the assizes.

Mr. *Bruen.*

1645. There is a clause in the English Juries Act with respect to challenges in civil trials; would you consider it a good thing to have a limited number of challenges given to each party in civil trials?—I think it would be desirable.

Sir *Colman O'Loghlen.*

1646. With regard to the right of challenge in criminal cases, in your opinion is the right of challenging 20 jurors too many?—Yes; it is never exercised for any legitimate purpose.

1647. Would you limit the right of the Crown solicitor to bid persons to stand aside to the same number as the prisoners have?—Most unquestionably not.

1648. You would still allow the Crown prosecutor to order to stand by as many as he pleases?—Yes, for this reason; the prisoner is interested in the result of the trial, while the Crown, on the other hand, is perfectly indifferent except to see justice done.

1649. But would that, in your opinion, have a good appearance in the eyes of the public?—The public are very sharp; they know men are never put by except for good cause.

Thursday, 21*st May* 1874.

MEMBERS PRESENT:

Sir Michael E. H. Beach.	Mr. Henry Herbert.
Dr. Ball.	Mr. Mulholland.
Mr. Bruen.	The O'Donoghue.
Viscount Crichton.	Sir Colman O'Loghlen.
Mr. Downing.	Mr. Plunket.
Sir Arthur Guinness.	Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, BART., IN THE CHAIR.

Mr. JOHN LEAHY, Q.C, re-called; and further Examined.

Chairman.

1650. I THINK you wish to make a statement to the Committee with regard to a certain point in your evidence given the other day?—Yes; I omitted to mention a matter which I think is very important, that is to say, with regard to the panel of jurors in the court of quarter sessions. As the law now stands, at the assizes the long panel is called, including the magistrates, special jurors and all common jurors, mixed together; but the trials at quarter sessions take place with common jurors alone. A proposition was made last year by the late Attorney General, Sir John Coleridge, that in his opinion it would be a good thing to have four special jurors mixed with eight common jurors; I fear that that would not work at all, and would not be approved of in Ireland; but, inasmuch as three-fourths at least of the business of the country is disposed of at the courts of quarter sessions in Ireland, I think the general panel, including special jurors and common jurors, should be called at the sessions, as it is at the assizes, only omitting so many of the special jurors as are magistrates, who legally form part of the court. Calling the general jurors' panel at the sessions in that way, you would not ensure the result of some special jurors being always on the jury; but in most cases you would have a few of them on, and being brought on in the ordinary way of calling, no jealousy could arise between them and the common jurors, and that would have the effect of putting some more intelligent men on the jury. I think that would be most important, for we try at quarter sessions above three-fourths of the crime of the country; I have often known the judges complimented at assizes by getting white gloves, when I have myself discharged every prisoner for trial in gaol a few days before. Some of the members of the Committee may not be aware that the court of quarter sessions differs essentially in Ireland from the same court in England. Our ancient jurisdiction is preserved in Ireland, and it is legally competent to the court to try every case except murder and treason, but in practice the Attorney General sends to the assizes, and not to the sessions, a great number of cases, party-riot cases and cases of rape, forgery, and perjury, and some

Chairman—continued.

others, which the court of quarter sessions can legally try, but which are sent to assizes for better jurors. One of the main distinctions as to punishments between the court of quarter sessions in Ireland and in England is this, that the quarter sessions in Ireland can give penal servitude, even for life; I have myself given penal servitude for life in one case; in England, where there is not a professional official chairman, the courts are limited, and regulated in their proceedings by the 5 & 6 Vict. c. 38; that Act of Parliament in England limits the offences which alone can be tried at the court of quarter sessions, and those offences include a great many cases which are almost every day tried in Ireland at quarter sessions.

Mr. *Downing.*

1651. For what offence have you transported for life?—A woman had been tried at Limerick, and had been previously convicted 28 times for various felonies and larcenies; there is no doubt we can transport for life under the original jurisdiction of the courts, and Mr. Coppinger, a most experienced chairman, had done so in Kerry and other counties. I have heard it said that there is some additional power in the chairman of the court of quarter sessions, if he is a queen's counsel, to pass sentences which cannot be done by ordinary counsel, but I doubt that is the case; I believe the limit in England is five years' penal servitude. There was one observation more that I wish to make; I heard one of the judges going the last assizes say, that he hoped the Committee, when they met again, would enable a judge to decide beyond doubt whether or not a panel might be quashed in case of a mistake by the sheriff in the selection of the panel; some of the judges thought it might be quashed, while some thought it could not; it would be a good thing to have that settled; above all things, I think that the judges of superior courts, at all events, ought to have the power to go on with the panel, even though there was a mistake made in the alphabetical list by the sheriff, provided it clearly appeared that it was not done from any corrupt or improper motive.

Mr. *J. Leahy*, Q. C.

21 May 1874.

Mr. *J. Greer*

21 May 1874.

Mr. JAMES GREER, called in; and Examined.

Chairman.

1652. WHAT position do you hold?—I am Crown Solicitor for the County of Antrim.

1653. That is an important and large county, is it not?—It has a very large population; it includes the town of Belfast, which contains now, I believe, about 150,000 people.

1654. How long have you held the position of Crown solicitor?—Since the year 1868.

1655. How do you consider that the juries in the county of Antrim generally discharge their duties?—I consider that they discharge their duties generally speaking, satisfactorily; they had a very irksome duty to perform at the trials of the rioters of 1872, which were proceeded with in 1873, and as a rule, their verdicts were satisfactory, and irrespective of any local or political feelings.

1656. Are the jury lists made up of men of good standing, such as merchants in Belfast, to any extent?—Yes; and that has a very salutary effect in giving a better character to the constitution of the panel.

1657. Have you noticed any change in the character and appearance of the jurors who have attended after the Act of 1871 came into operation?—Yes; there was a very considerable deterioration in the appearance of a number of the small farming class who answered to their names; men apparently without either capacity to understand the effect of the evidence, or its bearings on the case.

1658. Had you any proof that the men were in poor circumstances?—Yes: at the spring assizes 1873, which was rather a long one in consequence of the number of riot cases to be tried, several men applied to Judge Lawson to be allowed to return home, as they could not pay the expenses of the distant journey, and the expenses of living at lodging-houses, in addition to the neglect of their farming pursuits.

1659. Since the passing of the amending Act of 1873, have you observed any improvement?—Yes; I think there is rather an improvement since the increase of qualification.

1660. Do you object to the alphabetical arrangement of the names?—Yes; I think it is not satisfactory.

1661. Why do you object to it?—There are two objections to it; first, you exhaust, after a little time, a number of the letters, and then you are confined to a few other letters, differing in different counties, of course; and then when the men are called alphabetically and consecutively, it is competent for the prisoner's attorney or the Crown solicitor to know what people are to be called for the next jury, and so give facilities to canvass them, which is very objectionable.

1662. Can you suggest to the Committee any mode of meeting that difficulty?—I think balloting would meet it. When once the list is made up, by whatever authority settles it, there should be an immediate ballot for the position in which the names should be placed on the general jurors' book. I suggested that to the Attorney General for Ireland some time ago.

1663. Did you suggest that the ballot should be taken by the sheriff?—No, the chairman was the tribunal to settle the list of jurors, and I suggested that immediately after all objectionable names were expunged from the list there should

Chairman—continued.

be a general ballot to fix the position that individual jurors should afterwards have on the general jurors' book.

1664. Supposing the lists were properly revised, and composed of men who really ought to be upon them, should you suggest any other mode of ballot besides that?—Yes, for the trial of any case—any serious case, especially—I would have the jury selected by ballot, so as to insure there was an impartial jury.

1665. You think that might prevent any canvassing of the jury?—Yes; any canvassing of the jury on the part of the prisoner, or any allegation of favouritism on the part of the Crown.

1666. Can you give the Committee any striking instance of the action of a jury at the spring assizes in 1873?—Yes. There was a man tried for having gunpowder in a proclaimed district, and there was most distinct evidence that the gunpowder was found by the constabulary upon him. The jury were charged by Judge Lawson, and directed to convict the prisoner. They went into their room, and came out with a verdict of acquittal. The judge said he could not receive their verdict, and sent them back; he had explained the law of the case to them, and when they came back they gave in a verdict of conviction, explaining that they thought the prisoner might have bought the powder for some lawful purpose. They did not understand the effect of the evidence in relation to the crime charged against the prisoner.

1667. Had you any other instance of a similar kind at the same assizes?—There was another case in which there were 21 men charged with a party riot. One was called in the Crown Court, and it was stated to Judge Lawson that the traverser called was then serving as a special juror in the Record Court.

1668. This happened before the amending Act?—Yes, before the amending Act.

1669. Then I understand you to say that though this infusion of the mercantile element in Belfast gave, under Lord O'Hagan's Act, ordinarily good juries, yet there were cases where they showed a great want of intelligence?—Yes.

1670. Now, taking the law as it stands under the amending Act of 1873, what is your opinion with regard to the present qualification of town jurors?—I think that the qualification of town jurors should be increased still further from a 12 *l.* rating to a 20 *l.* rating for the county of Antrim, as it is in many other counties.

1671. Would you propose to apply that to houses in towns?—Yes, I would propose to apply it to houses in market towns only, and not to villages; the valuation in villages, not being market towns, is virtually the rating value of the land held by the occupier; and as the farmers' qualification in rural districts is a 30 *l.* rating, I would confine the 20 *l.* rating to houses and tenements in market towns.

1672. You would define a "town" as "a market town," would you?—Yes; I do not know a better way of defining it.

1673. Would you suggest that any further addition should be made to the jurors' list?—Yes, I think I would add an educational test, and that graduates in the universities should be eligible, and

Chairman—continued.

and half-pay officers in the army and navy; they would be efficient jurors, and they would have the moral courage to find a verdict according to the evidence.

1674. Does a valuation of 20 *l.* represent the actual rental, or near it, in the county of Antrim?—It is a little under the actual rental.

1675. What is your view with reference to the power of selection from the list, when it is once framed?—I find great difficulty in suggesting any really effective way of so excluding objectionable names from the list as to make it a perfect list. If there could be any such way of doing so revised by your Committee, I would first try it before again resorting to the sheriff and giving him the right of selection.

1676. Are you acquainted with the power that is proposed to be given to the sheriff in the English Bill?—Yes; I believe in the English Bill he has a power of selection out of the general list. If the sheriff had that power in Ireland, I would have the jury chosen by ballot to prevent his being supposed to exercise any favouritism, though I believe that there is really no substantial reason for thinking that hitherto the sheriffs in Ireland have not discharged their duties impartially.

1677. Do you consider that under the old Act of 1833, with that power of selection, the administration of justice was as impartial and more effective than it is under the present system?—Yes, I think it was. I believe that there were many fewer miscarriages of justice under the old system than there have been under the new.

1678. What is your opinion with regard to the best mode of revising the list of jurors?—I should think that the magistrates at petty sessions would have the best knowledge of the characters of the individuals who had been returned on the list by the clerks of unions. I think the chairman, generally, does not reside in the county. I think he has no local knowledge; by transferring the entire duty to him, it becomes really a revision by either the clerk of the peace, or more generally the deputy clerk of the peace, the clerks of unions, and the collectors of rates. I think they would be much more likely either to omit proper parties, or put on objectionable parties than the sheriff, under the responsibility of a heavy penalty for the due discharge of his duty.

1679. Then you would intrust to the magistrates at petty sessions, with the resident magistrates to help them, the duty of revising the lists?—Yes, I would intrust it to the magistrates at petty sessions, with a power of appeal to the chairman of the court of quarter sessions, to check any possible mistake.

1680. Would you propose to make any addition to the present list of exemptions?—Yes, I would exempt publicans. There is an order of the Attorney General, in all serious cases, for the Crown solicitor to order publicans to stand by; their houses are generally the resort of a number of people, and almost every case of any moment is discussed there. I think on this account the judgments are frequently prejudiced.

1681. Would you, in addition to that, propose to abolish any of the present exemptions?—Collectors of rates, I think, might fairly be put on juries. However in Antrim there is always a sufficient constituency to select jurors from. There are plenty of them.

Chairman—continued.

1682. You have not found in Antrim any deficiency in the jury list?—No.

1683. You always have plenty of jurors?—Yes.

1684. Has any complaint been made of persons being summoned on the jury more than once a year?—Yes; and that was very objectionable under the old system, because the sheriff did not go through the book. He threw the responsibility and trouble of service much too often on the same individuals. I think he ought to be obliged, if he has the power of selection, not to summon the same person a second time until he had once summoned all others on the list.

1685. You would have him go through the list, and till the list was exhausted not summon again those who had served?—Yes.

1686. Will you be good enough to tell the Committee what number of jurors you have on your list under the amended Act?—I think it is between 7,000 and 8,000. I take that from a Parliamentary return of last year.

1687. Could you say how many there were on the list before Lord O'Hagan's Act was passed?—I think about 1,500 or 1,600, but I am not quite certain. There are 7,836 on the common jurors' book in Antrim at present, and 1,982 special jurors.

1688. How many were there before Lord O'Hagan's Act?—I could not exactly state.

1689. Can you tell the Committee what difference the amended Act of 1873 made in the number?—No, I do not know.

1690. How many jurors do you require in a year for the county of Antrim?—Two thousand would be quite ample to do the work of the different quarter sessions; there are 16 of them, and the Recorder's court and the assizes.

Mr. *Downing.*

1691. That is for a year?—Yes.

Chairman.

1692. Do you concur in the suggestions which have been made to the Committee, that the grand jurors at the court of quarter sessions might be dispensed with?—No; I do not think in a county like Antrim I would dispense with them, as there is no difficulty in obtaining jurors.

1693. You think that their services are of some use to the public?—Yes, I think they are.

1694. Would you propose to alter anything in the present right of challenge which a prisoner possesses?—No; I would give him the same right of challenge.

1695. Or would you alter anything in the right of the Crown to order jurors to stand by?—No; I think the Crown should maintain that right also.

1696. Should you give any further right; a right of view, for instance?—Yes; I think that would be very useful. There was a case of arson in the town of Belfast where the judge suggested that the counsel should go out and view the premises, and if the jury had done so it would have been a great advantage.

1697. You would give that power on the application of either party, would you?—Yes; on the application of either party.

1698. Is there any other suggestion which you wish to offer to the Committee?—No; I am not aware that there is.

Mr. *J. Greer.*

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Mr. *Downing.*

1699. I understand you to say that you require 2,000 jurors for a year?—Yes; I suppose so, so as not to call the same persons a second time; the Recorder sits 12 times a year; there is a great deal of civil business.

1700. How often do you think a juror may be called upon to serve, would you say once in two years?—I think once or twice a year would not be irksome to a juror if it was necessary, unless he had a long distance to come. Antrim is peculiarly circumstanced; the town of Belfast is a very long way from the extreme point of the county, which is 56 miles long.

1701. I find that the amended Act reduced the number of jurors in Antrim by 3,216; if that be so, that is a considerable reduction, is it not?—Yes, no doubt.

1702. Did I understand you to say that there were fewer miscarriages of justice previous to the passing of Lord O'Hagan's Act than there have been since?—I am not aware that I said that; but I understood that generally over the country, immediately after the passing of Lord O'Hagan's Act, there were a great many miscarriages.

1703. But in Antrim, was that so within your own knowledge?—I did not intend to convey the impression that it was in Antrim.

1704. You do approve of ballotting for jurors in criminal cases, do you not?—Yes, I approve of that; I would ballot both after the list was revised, and I would also ballot when the jury was being called.

1705. You see no objection to the ballot in public court, in the presence of the Crown solicitor, in the presence of the attorney for the prisoner?—None.

1706. You said, I believe, that you would limit the qualification in towns to 20 *l.* in the county of Antrim?—Yes.

1707. I suppose you would qualify that answer by confining it to Antrim?—Entirely to Antrim; in the county of Tyrone the town qualification is 20 *l.*, and I do not see why it should be less in Antrim.

1708. But are you not aware that if that were applied to other counties you would scarcely have any jurors at all in some cases?—I do not at all mean to express an opinion as to other counties, but in Antrim it would be very desirable. There has been a great deal of rioting in Belfast, and it is very important that the lowest class of people, who are rated at 12 *l.*, should not be on the jury.

1709. Previously to the passing of Lord O'Hagan's Act, you saw poor men attending on juries, did you not?—Not so very low a class as there were afterwards.

1710. But did you never see poor men attending on juries before the passing of Lord O'Hagan's Act?—They did not look so poor as they do now.

1711. Had you not, before the passing of Lord O'Hagan's Act, poor men applying to the judge to be allowed to go home, because they could not afford the expense of living in the town?—No, not before Lord O'Hagan's Act.

1712. Since the passing of the new Act, have any persons applied to the judge on that ground?—No, I think not; it was at the first assizes of 1873 that that took place.

1713. One more question; you have stated that the chairman of quarter sessions was usually not resident?—Not generally resident.

Mr. *Downing*—continued.

1714. Now, supposing the revision of the list of jurors took place before the chairman and magistrates, would not that answer all purposes?—My preference for petit sessions arises from the circumstance that the magistrates would have more local knowledge at their respective petty sessions.

1715. If you give the revision of the lists to the magistrates, would you let the magistrate exercise the power upon any knowledge that he himself possessed privately?—Yes; I would let him have that power upon his own private knowledge, and the information which he received from the officials, that is to say, clerks of unions and collectors of cess.

1716. Would not that enable a magistrate, if he was so inclined, to put men off for political or religious reasons?—I think that magistrates are very little likely to do that; the chairman has no knowledge whatever, he depends on the information which he obtains from the collectors of rates and cess.

1717. But suppose the chairman with the magistrates at the court of quarter sessions had the power of revision in open court, what would you say to that?—If you were likely to have the same attendance of magistrates at the court of quarter sessions with the chairman, as you would have at the petty sessions, I quite agree with you, but there are 24 petty sessions courts in Antrim spread all over the county, and only four quarter sessions court towns, and the magistrates that attend those petty sessions have local means of knowing the character of the people, whereas the probability is that the attendance at quarter sessions would not bring nearly the same number of magistrates together, and many parts of the country would be wholly unrepresented.

1718. Are you in the habit of attending courts of quarter sessions?—Not for the last 15 years.

1719. Have you ever known any want of attendance of magistrates at the court of quarter sessions; do you not know that the magistrates always attend at the quarter sessions with the chairman for trial of criminal cases?—Very few of them I believe, but I am not talking of Antrim, I live in the county of Tyrone, and I am Crown solicitor for Antrim.

1720. You think, do you not, that the chairman and the magistrate would be a very good tribunal for the revision of the jurors' list, if the magistrates attended?—If you were likely to get a good attendance of magistrates from different parts of the county at the court of quarter sessions, it would be a very good tribunal; I have no objection at all to the tribunal, as such.

Mr. *Bruen.*

1721. But still you think that the magistrates at petty sessions sitting and revising the lists for their own districts would be a better tribunal, and have a better knowledge of the facts in revising the lists?—Yes; I think they would have more local and individual knowledge.

1722. Have you seen that proviso in clause 19 of the English Bill which says, "It shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he," that is to say, the man on the list, "is not qualified and liable to serve on juries, or that he is disabled by any permanent infirmity of mind or body, or in other respects unfit to serve on juries,

Mr. *Bruen*—continued.

juries, to strike his name out of such list," do you think that that is a fair statement of what the law should be?—Yes, I think so; I think there are circumstances under which it would be very necessary that they should have that power.

1723. With regard to the formation of the jury lists, did I understand you to say, that in your opinion the names should be placed in the order in which they were to stand by ballot?—I think that would prevent the original alphabetical arrangements being injurious.

1724. But on the formation of the panel by the sheriff from that jury book, how do you propose that it should be done?—I would not restore to the sheriff a power of selection at first, until I had given a fair trial of the practical effect of such other modes for the effectual revision of the list, as your Committee considers best; I have great doubts whether an effective revision can be had in either of the ways suggested, but if the sheriff is given the power of selection from the jurors' book, I would then have the jury called in court by ballot.

1725. But you do not think that there is any real constitutional objection to giving the sheriff this power of selection, provided it is found difficult to obtain a good jury panel without it?—No, I think not; I think if the sheriff returns 300 or 400 names, and a jury of 12 is balloted for, substantial justice would be done.

1726. You think that a man might fairly be called upon to serve on the jury once or twice a year, I believe?—Yes; I think that any subject should be called upon to serve once or twice a year, and more frequently if necessary.

1727. Do you give that opinion without any qualification; do you think that a man who has served on a trial like that which took place in the Queen's County last year, occupying over 50 days, should be called upon to serve again in the same year?—I would give the judge power to excuse any juror if sufficient cause were shown; I would permit any juror living at a distance from the assize town to send in an affidavit to the judge, stating the grounds for claiming exemption; it is very unreasonable to have men who have served for such a length of time called a second time so soon afterwards.

1728. Do you not think that it would throw on the judge a very great deal of difficult business which would take up much of his valuable time?—No; I think if the party wishing to be excused forwarded that declaration to the judge, the judge would communicate with the sheriff and ascertain whether the facts were rightly stated, and then deal with the case quickly.

1729. Why should not you give that power to the sheriff, as you say the judge ought to apply to the sheriff for information?—I think I would let the judge deal with such cases; it is not easy to draw a hard and fast line in cases of the kind.

1730. As to the additional qualifications which you suggested for qualifying men to be on the jurors' list, do you think that many would be added under these qualifications?—No, not very many; but in the town of Belfast there are a good many persons residing in houses of less than 20 *l.* valuation who still would be very good jurors, and some of them in lodgings.

1731. Have you exercised the power of ordering jurors to stand aside very much more since the passing of Lord O'Hagan's Act than before?—No; I am very chary of using that power; it is very objectionable.

Mr. *Bruen*—continued.

1732. You do not find it necessary, do you?—I thought it was invidious, and I very seldom indeed exercised it.

1733. You think that it is an invidious power to be used by the Crown solicitor?—Yes; I think so.

1734. Are you not aware that in some counties in Ireland it is the only means whereby substantial justice could be got at all?—I quite believe that; in my own county Tyrone but for the exercise of that power very largely on the trial of Montgomery, the sub-inspector of police, I do not think there would have been any conviction.

Mr. *Verner*.

1735. Do you not think that so large a collection of magistrates as there would be at the quarter sessions would be more careless about the lists than the magistrates at petty sessions?—Yes, I think so; I think it would be a divided responsibility, and they would be less likely to scrutinize the lists accurately; the number at the court of quarter sessions would be much larger. If the petty session list were placed before them, their individual attention would be engrossed and brought to bear on the cases separately.

1736. Your opinion is strongly in favour of the petty sessions magistrates performing that duty?—Yes; I am very stongly of that opinion.

1737. As you are connected with other counties besides Antrim, does your opinion that the grand jury at the court of quarter sessions should be retained apply merely to Antrim, or do you say that from your knowledge of other counties?—Yes, it applies to my knowledge of Tyrone as well. I would retain them in Tyrone, although there is very little crime there, and they are seldom of much value; but I would retain them.

Mr. *Mulholland*.

1738. Are you aware that there was a good deal of dissatisfaction at Belfast last assizes notwithstanding the amending of the Act; I mean with regard to the special jurors?—Yes, there was.

1739. In trying mercantile cases there were publicans, butchers, and men of that class on the juries, were there not?—Yes, there were.

1740. And although they were rated highly, they were not men of sufficient intelligence to serve on a special jury?—Just so. That traverser to whom I have alluded was on the special jury list.

1741. But before that time special juries were always very satisfactory in Antrim, were they not?—I do not know much of the civil side.

1742. But I believe they were quite as good as they should be so long as the sheriff had power to select qualified men to try that class of cases?—Yes, I believe so.

1743. With regard to the common jurors in Antrim, were not a good many excused by the judge at the last assizes on account of their being illiterate?—No, not at the last assizes; but at the spring assizes of 1873 that was so.

1744. Was it not at the last assizes that the sheriff's footman was called?—On the panel of 1873 there was a chimney sweep.

1745. Are you aware that at the court of quarter sessions there is a great deal of dissatisfaction among the jurors at not being summoned as

Mr. *J. Greer.*

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Mr. *Mulholland*—continued.

as they used to be in their own neighbourhoods, but taken from considerable distances?—Yes.

1746. Instead of the work of jurors being lessened by the number on the list, now it is virtually increased from the fact that they have to go from considerable distances to serve?—Yes, they have to go considerable distances to serve.

1747. I suppose the merchants of Belfast would rather pay any fine than go to Antrim to the court of quarter sessions?—Yes; some of them would.

1748. And men would rather pay a fine than go from Ballymena to Ballymoney?—Yes.

1479. In many cases they could not get a jury last year, I believe, and the business of the court was suspended in consequence?—Not at the assizes.

1750. But at the court of quarter sessions it was so, was it not?—I was not at the quarter sessions.

Mr. *Mulholland*—continued.

1751. Do you not think that the sheriff could summon the jurors virtually in a fair and impartial manner; and that at the same time, while going over the list, he might distribute the service more evenly if he had a discretionary power?—Yes, I think so.

1752. So as to make the service more convenient to the jurors?—Yes, I think so; and I think he generally did so.

1753. Do you think that the class of jurors whom it is desirable to omit could ever be effectually omitted from the list (I mean those that are illiterate, and unfit for other reasons), except by some plan of revision in which the magistrates would have power to exclude, upon their own knowledge, from the list?—I think that the magistrates should have the power to exclude, upon their own knowledge of the circumstances, certainly.

Mr. THOMAS BOYD, called in; and Examined.

Mr. *T. Boyd.*

Chairman.

1754. I BELIEVE that you are Sessional Crown Solicitor for Tipperary?—I am, for the two ridings; north and south ridings.

1755. Are you acquainted with the evidence which Mr. Bolton gave before the Committee the other day?—Partially.

1756. I think Mr. Bolton expressed an opinion that the grand jurors at the court of quarter sessions might be done away with; what have you to say on that point?—I do not agree with him. I think that the grand jurors at the court of quarter sessions ought to be still continued; if we could not get enough petty jurors, I should be very glad to see the jurors summoned on the grand jury take the part of petty jurors, but I would certainly not suggest that the grand jury system at the court of quarter sessions should be done away with.

1757. Can you give the Committee instances where the grand jury system at the court of quarter sessions has proved of service?—I think it very important that the witnesses should be examined, and a case made before the grand jury before a party is put on his trial, though those cases are investigated at the petty sessions, no doubt, and I think it most desirable, until at least some serious evil is shown, that there should be an inducement for a better class of persons to attend and continue to take part in the administration of justice, which as mixed petty jurors they might think so respectable.

1758. Does the court of quarter sessions grand jury often throw out a bill?—Frequently.

1759. Very frequently?—Not very frequently.

1760. So far as you are aware generally, do they throw the bills out for good cause?—In many cases I have known bills thrown out without any cause, and I have taken steps as far as I could to remedy it.

1761. In what way?—Thus; immediately after my appointment as sessional Crown solicitor, there was a case of a most aggravated assault charged against three men; it is a very common practice after a fight to try and settle it; having examined the prosecutor, I concluded that he wanted to abandon the prosecution. The case went before the grand jury, and the grand jury ignored the bill; he came afterwards to me, and I said, "You behaved very badly, and the story

Chairman—continued.

you told was not what you swore." He assured me that it was, but I did not believe him. I inquired a little further about it, and I was led to think that I was wrong. I said to the man, "Keep your mind to yourself, and come to me at the next sessions, and I will see if it cannot be remedied." The next sessions was held in another town before another grand jury, and the grand jury at that other town instantly found a true bill. I sent the three prisoners to the assizes; they were found guilty, one got 12 months' imprisonment, and the other two got nine months' imprisonment; there was no canvassing of the second grand jury, for the prisoners thought there was an end to the matter. That system of canvassing exists very largely, so far as I believe, in the county of Tipperary.

1762. Can you suggest any means of getting rid of that system of canvassing?—To have very large panels is the only means which I can suggest; there is less probability then of canvassing.

1763. Did you hear what was suggested to the Committee to-day by the witness who preceded you, namely, a system of ballot?—I cannot see very well how that system of ballot would remedy the evil: I do not entirely go with it, but I have not thoroughly considered the matter.

1764. If it were not known what jury would try a particular criminal case, there would be no opportunity comparatively of canvassing, would there?—But they must be all summoned, and it would be known, and they would have the same opportunity as they have now; I am not struck with the force of the ballot getting rid of the practice of canvassing, though it might do so in some measure.

1765. Is there any other suggestion which you wish to make?—I am decidedly in favour of the revision being carried on at the petty sessions. I think that the revision before the chairman and magistrates at the court of quarter sessions is merely nominal. The magistrates who attend generally at the court of quarter sessions have no local knowledge of the great body of the jurors that are summoned. Take a district in my own county, the magistrates may live 20 miles away. I speak now of Tipperary. The magistrates will not come 20 miles to attend the quarter sessions;

Chairman—continued.

sessions; but at the petty sessions there is not a single magistrate who sits at the petty sessions that would not know the jurors.

1766. Is there any other point which you wish to speak to?—It was suggested by Mr. Greer that the qualification in towns should be increased. Now, if the qualification in towns in my county were increased, we should have no jurors in the towns at all. But I think that Mr. Greer qualified that in a way which shows the great difference which exists between counties in Ireland. There is one other point which I wish to refer to. I think that the age of jurors ought to be extended to 65. I think a man ought to be very well able to continue his duty up to 65. It has also occurred to me that the constabulary ought to be employed to serve jurors with summonses.

1767. You are aware, I suppose, of the objections which have been made to that before this Committee?—No, I am not aware of them; this idea has only occurred to me within the last few days; I think also we have in some measure to attribute the want of good jurors to the forbearance of a great number of judges in not imposing fines on the persons who are summoned and do not appear; if a juror gets a summons and he can afford it, he says, "I do not care about a fine of a pound, or two pounds, I will not attend; I will take my chance." I know gentlemen of intelligence and wealth in Wexford who have been summoned for 20 years, and who have never attended on a jury; I think that is bad; if such men attended, we should of course have a better class of jurors; I would also do away with a vast number of exemptions.

1768. Which would you do away with?—I would be inclined to limit the exemptions very much indeed; I do not know why civil engineers should be exempted.

Mr. *Downing.*

1769. There are not very many civil engineers, are there?—No; I do not see why actuaries should be exempted, or public notaries; schoolmasters are said to be very eccentric, but except for their eccentricity there is no objection to their being on juries; then take persons holding appointments under any local authority; I would exempt persons holding appointments under magistrates; but the Act says "under any local authority," which is a very extensive term; then there are persons licensed to sell or distribute stamps; every one who sells a penny stamp is exempted from serving on juries, which seems to me quite unnecessary; masters of vessels and duly licensed pilots ought to be excused if it interferes with their business, but they should not be exempted in my opinion because they might be at home doing nothing; that would let in a very large number of well qualified jurors.

Chairman.

1770. It has been suggested to the Committee that publicans should be disqualified; what is your opinion with reference to that?—I would not approve of that; that is a very large question, because it involves the question of what is a publican. There are some grocers who would come under that name, who apply to the magistrates for a license, and those men may be doing business to the extent of 10,000 *l.* or 20,000 *l.* a year, and they ought not to be excluded. That is a question which should always be left to the discretion of the Crown solicitor, who may object if he pleases, but they should not be exempted in my opinion.

Chairman—continued.

Dr. *Ball.*

1771. If the judges get 12 men in a box, they are very apt to let off any juror that is absent; are they not?—Yes, they are; here lies the failure I have already alluded to.

1772. Now before you put a prisoner on trial at the court of quarter sessions, what authority have you to authorise you to indict him at all?—The clerk of the peace prepares the indictment.

1773. Not the sessional Crown solicitor?—No, I have nothing to say to it. The clerk of the peace is paid for that, but I generally look over it.

1774. Where does he obtain the grounds on which he indicts a prisoner?—The depositions are taken before the magistrates at petty sessions or out of the petty sessions, and it is the duty of the magistrate, if he takes them out of petty sessions, to send them to the petty sessions clerk, who is bound to send the original depositions to the clerk of the peace within six or seven days; and it is the duty of the clerk of the peace to prepare such a Bill as is required upon the information supplied to him.

1775. Before a man is put on his trial at the court of quarter sessions there is a proceeding before the magistrates?—Yes.

1776. Is that always the case?—I will not say always.

1777. Now suppose there was no proceeding before the magistrate, who is it that settled whether there ought to be an indictment or not?—I make a point of personally investigating each case; if on investigation I think a man ought to be indicted, although he has not been sent forward, I include him in the indictment.

1778. Do you ever let a man off who is returned by the magistrates?—I usually send him before the grand jury, and enter a *nolle prosequi* afterwards, if I think it is a case that ought not to be tried.

1779. That is all done under the sessional solicitor's own discretion, is it?—Yes.

Chairman.

1780. Is it not the fact that anyone can prefer a bill of indictment before the grand jury?—Yes, but it is not very usual. It is, I believe, the case in England, where there are no Crown solicitors.

Mr. *Downing.*

1781. Do I understand you to say, that if the magistrates investigate at petty sessions, and take information against two parties, and not against a third, you include him in the bill of indictment, without consulting the magistrates?—Yes.

1782. You have done that, have you?—Yes.

1783. You think you are justified in doing that, do you?—Yes.

1784. Then what is the use of the magistrates hearing the case?—Any party can as a matter of course apply to the court for liberty to send up a bill to the grand jury; unless in those cases specially referred to in the "Vexatious Indictments Act."

1785. I can quite understand a man going into court and doing that, but I do not understand the sessional Crown solicitor taking upon himself

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Mr. *Downing*—continued.

himself to include a man in a bill of indictment against whom a magistrate refused an information?—I consider that it would be my duty as a public prosecutor to include him in the bill of indictment, if on investigation I thought he ought to be so included; I have very often indeed found that I get the very man who had been excluded convicted.

1786. With regard to persons canvassing the jurors, have you ever known to your own knowledge that any number of jurors have been canvassed?—No, or else I would soon take steps to stop it.

1787. Now, if balloting for the jury would not prevent canvassing, it certainly would, to a great extent, rather annul the evil effects of it, would it not?—I am not struck with the force of ballotting, because the juror is summoned; it is notorious that he has to attend, and he would be warned to be there; if I were the prisoner's defender, I would tell him to be there; his name is put into the ballot box, and he must be there to answer to his name.

1788. Can you suggest any remedy for the evil of canvassing?—I do not approve of the ballot; the only thing I can suggest is to have a very large panel, with information to the Crown with reference to the character of the jurors.

1789. Now, to come to the exemptions; there is only one party in a town who is licensed to sell stamps generally speaking, and that is the postmaster, is not that so?—There may be one or two, and he may be very intelligent and a very useful man to be on a jury.

1790. You say that you would not exempt persons holding situations under local authorities from serving on juries?—No, I would not; it is very desirable that we should have as many intelligent people and as good a class of people as possible on the juries.

1791. Would you propose to put on juries clerks of unions?—The clerk of the union frames the list, and, therefore, I would exclude him.

1792. Would you propose to put on the jury list relieving officers?—They have nothing to do with the preparation of the lists, and I would, therefore, put them on in that case.

1793. Supposing they are required, as they very often are, to provide relief for a destitute person found on the roadside suffering from illness or otherwise, and he were on the jury, how would you propose to provide for that?—Just the same as if he were summoned to attend a trial in Dublin for a fortnight or a week.

1794. He would then apply to the guardians to appoint a substitute in his absence, I suppose?—Then let that be done in the other case.

1795. You think the guardians might provide a substitute for the day if necessary?—Yes, if it were necessary; I certainly would not put such a class as relieving officers off the jury list.

1796. You would not exempt them, but you would allow the court to excuse them if necessary?—Yes; I would allow the court to excuse them if necessary; they may reside in the same town; a great many of them do reside in the same town.

1797. Have you looked at all at the number of houses valued at 12 *l.* in your county?—No.

1798. Would you see any objection to reducing the qualification of jurors in towns?—The line must be drawn somewhere. I think that a person rated at 10*l.* would be a very good juror; his rent is more likely to be 15*l.* than 10*l.*

Mr. *Downing*—continued.

1799. Do you not think that the inhabitants of towns are, generally speaking, more intelligent jurors than farmers in the country?—I think so, as a body.

1800. You know that houses are rated very low in towns, do you not?—Yes, no doubt.

1801. Do you see any objection to reducing the qualification to 8*l.*?—I would say that 10*l.* would be low enough.

Dr. *Ball.*

1802. You would apply that only for particular counties, would you not, because the proportion of the rating to the rental is quite different in different parts of Ireland?—Yes.

1803. In Tipperary what should you say should be the qualification; would you say 10*l*?—Yes; I think 10*l.* is enough, and that the person would make a very good juror.

1804. Do you not think that in towns the small shopkeepers, who get their living from selling to the lower classes, are liable, perhaps, to influence or intimidation, which might render them unwilling to convict a man?—Of course they are very liable to be influenced, but you cannot exempt them.

1805. The question is more with regard to the extension of the qualification to a lower limit, and not so much with reference to exemptions; is not the small class of shopkeepers, who would be brought in by a lower qualification, more liable to be biassed by certain external influences than some of a higher class?—Not as between 10*l.* and 12*l*, I think; I believe 12*l.* is very fair, but I do not think that 10*l.* makes any serious difference.

1806. Have you had occasion very largely, in the county of Tipperary, to order the jurors to stand aside at your court of quarter sessions?—No, not at all; I think it is a most invidious thing to do.

1807. You have not had occasion to do it, have you?—I have, but it is a power which I am very slow to exercise.

1808. You do not think that is a power which should be more largely exercised than it has been, if it is possible to avoid it?—It is a matter always in the discretion of the Crown solicitor, and he may exercise his discretion very largely indeed if he pleases. In my opinion it is very invidious, but still it should be left entirely in the discretion of the public officer, I think.

1809. You would think that other means should be taken to have good jurors in the box than the exercise of that power of ordering jurors to stand aside?—Yes, decidedly.

1810. You are not very favourable, I suppose, to the principle of Lord O'Hagan's Act, which is a mechanical selection of the jury panel from the list?—I would rather be inclined to give the alteration in the law a trial. I should like to see it a little modified and improved, perhaps, but with reference to going back to the old system again, I should be very slow to suggest that. I desire however to say, that after long experience in two counties I never saw the slightest partiality or bias on the part of the sheriff with regard to the selection of juries; I can very emphatically say that.

Chairman.

1811. Have you had any instance at the court of quarter sessions in the county of Tipperary of the

Chairman—continued.

the same kind of inconvenience arising from illiterate or ignorant juries, as Mr. Bolton told the Committee of the other day?—Yes; we have had several instances of very extraordinary verdicts; I think on the part of the common jurors there is a great desire to gain some little power, and to share, as it were, the duties and discretion of the magistrates; that they should have the power, if a man was accused of an assault of a very aggravated character, to find him guilty of only common assault (that is one of many instances); in fact, to mix up their functions with the functions of the bench; I recollect immediately after the passing of the first Act there was a man tried for stealing some petty thing, I think it was a rabbit trap, in Thurles; he pleaded not guilty before the jury; his admission of the offence was proved and not denied; the judge charged, the jury retired, and in a few minutes brought in a verdict of "Not guilty;" one of the jurors afterwards said, in my hearing, "Did you think we were going to find a poor man guilty for stealing a few rabbit traps?" I think there is rather an improvement under the amended Act, because the qualification is somewhat better, but still juries are very slow to understand circumstantial evidence; the point must be put very plainly to them by the judge, and then it is almost impossible in many instances for them to take it in. I remember a case that was tried at Templemore, where two pickpockets were charged with robbing a man of 40 *l.* odd; it was proved by the prosecutor and his companion that the money was taken out of his pocket; he actually caught hold of the prisoner's hand when it was in his pocket; the thief got out of one railway carriage and got into another carriage, where there was a woman, to whom we believe the money was handed; the case was as clear as possible, but we could not get the jury to convict, because the money was not found in the prisoner's possession; the jury disagreed, the case was sent to another jury at the following sessions, who found the man guilty, and the court gave him twelve months' imprisonment. The case was conclusive against the prisoner, but the first jury would not convict the man; they were told over and over again by the judge that he was charged, not with having the money in his possession, but with stealing it, but that did not affect them.

1812. Do you find that the change effected by Lord O'Hagan's Act has caused greater failures in the administration of justice than occurred under the old system?—I am bound to say that I have seen many cases under the present system where the jury have done their duty thoroughly and independently, that may be attributed to the fact of no canvassing going on, or to other reasons; but I have certainly seen them find most independent and fair verdicts, that no one in the world could complain of.

Dr. *Ball.*

1813. Referring to the size of the county of Tipperary, let me ask you whether it is not the fact that canvassing takes place more frequently when juries are selected too much from the same locality?—You must extend the panel away from the locality, otherwise they will canvass; you

Dr. *Ball*—continued.

cannot help it if you have the same jury every time at the sessions.

Chairman.

1814. But were the jury in your opinion worse or better under Lord O'Hagan's Act?—I think myself that probably under the old Act justice was as fairly administered; under the new Act there have been very fair verdicts, and of course, I do not mean to say that there were not fair verdicts under the old system also.

1815. You think that the amending Act of 1873 improved what Lord O'Hagan had brought about?—It certainly improved the action of the first Act of Parliament, in so far as it increased the qualification, that is all. There was a very inferior class introduced under the first Act of Parliament; perfectly unintelligent jurors.

Mr. *Downing.*

1816. With regard to acquittals, I suppose your experience would lead you to say that the demeanour of a witness, and the cross-examination of a witness by a skilled advocate, will very often lead the jury to disbelieve a witness, and that may be a reason for an acquittal that you do not approve of?—Yes, of course, those are the very functions of a jury, namely, to form their opinion of the witness as to whether he is trustworthy or not, but where the witnesses are not at all shaken in their evidence, and their demeanour is such as to inspire confidence, I have seen verdicts against the evidence, even under these circumstances.

1817. Where the man was charged with stealing the money, and he was immediately afterwards apprehended, the money was not found on him, was it?—No.

1818. The fact of the money not being found upon him was a very material fact for the jury, was it not?—A witness swore that he saw the man take the money out of the prosecutor's pocket, and there was another witness who saw him run away; I confess that there was no room for doubt in that case. There was a very curious case immediately after the first Act passed, where a tolerably respectable farmer's son was tried in the town of Tipperary; that was the case of a man having in his possession two cows, supposed to have been stolen. I must tell you that that is considered to be a very disgraceful offence amongst that class in Tipperary; to break a man's head would not be considered so disgraceful. It was generally supposed that terrible efforts were being made by the prisoner's father to get him off; the case came on for hearing; the jury retired, and in about 10 minutes they brought in a verdict to the surprise of everyone, "Not guilty"; when the names of the jury were called over, one of them said, "I have not agreed to that verdict, that is not my verdict; that is the verdict of the other 11, and not mine; he said I only laughed at it, the case was as plain as two and two are four." They were told to retire again; this man maintained his opinion, and the jury were discharged. The man was afterwards tried at the following sessions elsewhere, found guilty, and he got two years' imprisonment. If that man who had disagreed had not been on the jury justice would have been completely frustrated in that case.

Mr. *T. Boyd.*

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Mr. JOHN NORWOOD, LL.D., was called in; and Examined.

Mr. *J. Norwood.*

21 May 1874.

Mr. *Bruen.*

1819. I THINK, in consequence of your position, you have had some experience in the county and the city of Dublin, with reference to the expenses of the Juries' Act?—Yes; I have been at times chairman of the grand-jury committee, which passes the presentments for the City of Dublin; I am a member of the town council, and consequently of the grand jury. A great number of the inhabitants think that the expenses for making out the jury list ought not to be chargeable on the ratepayers of the city of Dublin, as they amount to a very large sum; among other items that have come under our consideration have been the expenses for the list of jurors. I have before me the account for 1872 of the sums paid by the city treasurer for preparing, printing, posting, advertising, and revision of the lists of jurors for the city of Dublin for the year 1872, pursuant to application from the various departments, and under Section 16 of the 34 & 35 Vict. c. 65, namely, remuneration and expenses, collector general's department, 223 *l.* 10 *s.*; remuneration to rate collectors, 200 *l.*; remuneration and expenses to clerk of the peace's department, 220 *l.* 2 *s.* 6 *d.*; remuneration to revising barristers, 262 *l.* 10 *s.*; remuneration to court keeper, 10 *l.*, making the total sum for that year 916 *l.* 2 *s.* 6 *d.*; this is for the jurors' list.

Chairman.

1820. Is that for the county of the city of Dublin alone?—Yes, I may state that the Committee had very great difficulty in this case in determining the amount to be paid, for this reason, that they knew that many of the sums paid to the collectors and others were not sufficient remuneration for the amount of toil and trouble that they had had in going through the list of ratepayers, in order to prepare the jury lists; the original lists containing some 20,000 names. Next year the schedule of presentments made under the provisions of the 12 & 13 Vict. c. 97, s. 42 (that is to say, in September 1873), was submitted to the judge; the expense of preparing the list of jurors had risen from 916 *l.* to 1,088 *l.* 13 *s.* 9 *d.*, and an application was made to the judge, both on the occasion of the fiat of the first presentment and also on the fiating of the second presentment, to increase some of the items of remuneration; but the learned judge who presided in the Court of Queen's Bench felt that he ought not to exercise his discretion to increase the sum (although he admitted that in some cases they were too low), inasmuch as he thought that the tribunal, who had the best means of judging, had fixed the remuneration: but the parties were dissatisfied. The clerk of the peace was discontented with what he received, and other persons were not pleased with what they received; but still the grand jury thought that they ought to keep the expenses as low as possible, as standing between the ratepayers and the persons seeking to charge the rates, and they fixed the remuneration at the sums which I have mentioned. I have read the English Bill brought in by Mr. Lopes, and I find by the 44th section that overseers and vestry clerks are to present the accounts to the Court of Aldermen in London, or justices in the petty sessions, as the case may be for revision, and when certified, the sums to be payable for the preparation of similar lists in England are to be paid out of moneys to be provided by Parliament for that purpose. Now, this matter is of very great importance to the city of Dublin, where the taxes levied on the inhabitants amount sometimes to between 8 *s.* and 9 *s.* in the pound. Not only those items for the preparation of the jurors' lists; but a great many other matters which have no necessary connection with the poor's rates, are charged on the poor's rates, and the clerks of unions, and other persons who ought to be discharging duties incidental to the administration of the poor law, are compelled to discharge those other duties, and are paid out of the rates. I had been for many years vice-chairman of the North Dublin Union, and also a member of the board of guardians of the South Dublin Union, and we always felt that it was very hard on the ratepayers that sums disbursed for Imperial purposes should be levied out of the poor's rates in those unions.

Chairman.

Mr. *Bruen.*

1821. I suppose you consider that the preparation of the jury lists is fairly chargeable to Imperial revenue?—The Corporation of Dublin had the matter under their consideration, and they came to that resolution. We waited on Lord Hartington, when he was Chief Secretary for Ireland, and we represented to him that as those jury lists were prepared, and the preparation of them was part of the machinery for the administration of justice, they ought to be fairly chargeable on the Consolidated Fund, just as the expenses of the several functionaries who assist in the administration of justice are chargeable on the Consolidated Fund.

1822. Do you think that those items could be fairly reduced?—I do not; I think that the remuneration of 25 *l.* to the collectors of rates, for instance, is very inadequate remuneration for the labour which those gentlemen undergo; they have to go through all those enormous lists, and they have to aggregate each man's rating. Sometimes in different wards a man will possess a number of holdings. They have to put the names in dictionary order, and then they have to attend before the revising barristers for many days, from 10 o'clock till four and sometimes later than that hour.

1823. Can you tell the Committee on what principle the remuneration to the rate collectors was given to them?—Some of them attended before the Grand Jury Committee, and stated the number of days they had been employed; we gave them 20 *l.* on that occasion; we increased it to 25 *l.* last year, but even still it is not a fair remuneration for the collectors; I believe when I was revising barrister for the county of Antrim, after the passing of the Reform Bill, I allowed by my certificate 25 *l.* for the rate collectors for their mere attendance in court during the revision. I think those gentlemen, considering all things, ought to have had more. I daresay they would have had more if the ratepayers were consulted in the matter.

1824. In the clerk of the peace's department on what basis did you give remuneration to him and his assistants?—The clerk of the peace was very much dissatisfied; we gave his subordinates what we considered a fair remuneration, but the clerk

Mr. *Bruen*—continued.

clerk of the peace thought he ought to have had a great deal more; however, the Grand Jury Committee thought that that gentleman had merely the duty of inspection, and no manual labour, and they therefore gave the small sum; he appealed against their decision, and the judge refused to disturb it.

1825. Who was that gentleman?—The clerk of the peace himself.

1826. Did you consider that the clerk of the peace had very little labour in the matter?—I considered that he had not very much labour about it, because he had a number of subordinates in the office; it would be otherwise in counties or in small boroughs where he would not have so many assistants in his office.

1827. What is the remuneration to the court keeper; for what labour is that 10 *l.* paid for?—The revision lasts for very many days, as you may observe from the sums paid to the barristers.

Chairman.

1828. Has not the man a salary as court keeper?—He has, but this work is done out of term; his salary is for services rendered during the sitting of the judges; The revision sessions are held out of term, and, of course, the court-keeper has additional labour in cleaning the place, and keeping it, and attending to doors and so on, during the sitting of the court.

1829. Have you any suggestions to make to the Committee, by which the expenses under the Jury Act could be reduced?—I do not think that they can be reduced much lower than they are at present. I took a great deal of pains to inform myself previously to fixing those sums, and in justice to all parties I think we cannot reduce them.

1830. In this list of the amount of expenses for September 1873, I see it commences with a sum of 283 *l.* 5 *s.* for "remuneration and expenses collector general's department." Is not that the department of the rate collectors?—Yes.

1831. There is also a sum of 200 *l.* paid to rate collectors?—The first sum does not include the rate collectors. There is a great deal of scrivenry included in that, and also the remuneration to the collector general of rates himself. I think 500 *l.*, and the balance is for writing, books, paper, printing, and so on in the preparation of the lists.

1832. But after all, you carry on the list from year to year, do you not?—New lists have to be made out.

1833. From the old ones I suppose?—The changes in Dublin are so great, and in other large cities that, practically, they are new lists; of course the old ones assist them to some extent. But my opinion is that the amount cannot be reduced.

1834. If 150 *l.* is also to be paid to the collector general, you have to pay 300 *l.* altogether, have you not?—No, the collector general of rates got 150 *l.* as his remuneration for the responsibility and trouble in overlooking the matter; he is specifically mentioned, I believe, in the Act of Parliament.

1835. But the amount of the remuneration is not mentioned in the Act of Parliament?—No, it is left to the grand jury's discretion.

1836. How many days did the revising barristers who have been paid 262 *l.* 10 *s.* take in revising the lists?—There are two of them, and they got 125 guineas each. I think we calculated it at five guineas a day, that is the sum that is generally allowed for revising barristers; it is what I received myself when I was revising barrister at Antrim, and also when I was revising the municipal lists, for eight or nine years, in the town of Belfast.

Chairman—continued.

1837. You mean that those two barristers took 25 days in revising the lists?—Yes.

1838. How many hours a day did that occupy?—They sat from ten to four; it is an exceedingly heavy job going through those enormous lists in a town like Dublin.

1839. Is this charge the usual charge?—Those charges were only since the passing of Lord O'Hagan's Act.

1840. Can you tell the Committee what the expense incurred in preparing the lists was before the passing of Lord O'Hagan's Act?—I cannot tell you that.

1841. Now, supposing, as you have suggested, that those charges, which amount to nearly 1,100 *l.* in this year, were paid by the Treasury instead of by the corporation, how would you suggest that the expenditure should be checked?—In the first place, I think that the barristers would be fairly entitled to the remuneration which I have stated, namely five guineas a day; considering in some cases they have to sit during term, it interferes very much with their other business.

1842. That does not answer my question; how would you suggest that the expenditure should be checked if it were borne by the Treasury instead of by the corporation?—The only check would be, I suppose, the return of the barristers and the return of the clerk of the peace. The clerk of the peace could certify the number of days the revision lasted under his hand, and the remuneration could be easily calculated as far as the barristers are concerned. Then with regard to the collector generals departments, the collector general could transmit, under his hand, a certificate of the amount which he had paid in his department for the revision of the lists, other than the remuneration to the rate collectors; and if he certified that the collectors were occupied so many days in this particular duty, and so many days in attending at the court, it could easily be calculated what they ought each to get when the scale was fixed.

1843. This expenditure is now subject to the check of the grand jury, and also to the fiat of the judge, is it not?—Yes.

1844. What do you propose to substitute for that if the charge were borne by the Treasury instead of the corporation?—I should suggest as far as the several items are concerned, that the head of the department should certify them, and Parliament could fix the sum which the chiefs of the several departments ought to get; perhaps it ought to be a fixed sum.

Dr. *Ball.*

1845. Are the revisors of these lists the same as those who revise them for the Parliamentary franchise?—Yes; I would not suggest, so far as the city of Dublin is concerned, that the tribunal should be changed; the barristers in Dublin have ample means before them in evidence and otherwise for determining the proper parties to be placed on the list.

Mr. *J. Norwood.*

21 May 1874

Mr. *J. Norwood.*

21 May 1874.

Chairman.

1846. I see an item which appears just previous to the expenses of the list of jurors for the year 1873, the expense of registering voters, which is put down at 1,167 *l.*?—Yes; it is the same two gentlemen who discharge the two functions, namely, revise the list of voters, and the jury list; that is one of the reasons why I say they have always the evidence before them with reference to the different persons, as the lists are very nearly alike.

Dr. *Ball.*

1847. The barristers are both elected by the corporation, are they not?—Those two gentlemen are appointed by the Crown.

1848. But the corporation appointed the borough assessor, did they not?—Yes; there are two borough assessors in Dublin, and those gentlemen are elected by the burgesses; in Belfast it is otherwise, and in other towns under 3rd and 4th Vict., cap. 108, the barristers who used to sit for the revision of the municipal lists were nominated by the assessors, who were elected by the burgesses; I was borough assessor for many years until unfortunately I gave an opinion that under the 3rd and 4th Vict. cap. 108 there could be no remuneration legally paid to the legal assessors, and the appointment ceased to be made for that reason, my opinion having been subsequently confirmed by the Attorney General.

Mr. *Verner.*

1849. I suppose part of this expense is owing to the list having to be made out in alphabetical or dictionary order?—Necessarily it is so; the increased remuneration of 5 *l.* this year was given for that reason.

Mr. *Plunket.*

1850. Had the sub-sheriffs to bear those expenses before the passing of Lord O'Hagan's Act?—Not having that Act of Parliament in my memory, I cannot answer that question.

Dr. *Ball.*

1851. The recorder revised the jury lists before Lord O'Hagan's Act, I believe?—I think so.

1852. All the expense was included in his salary, I believe?—I think that was so.

Sir *Arthur Guinness.*

1853. Does not the sub-sheriff bear the expense of the revision in the counties?—No, I think not.

1854. He used to bear it, did he not?—I think so.

Chairman.

1855. Do you know the cost of revising the lists in other places besides the city of Dublin?—Yes; a relative of mine is revising barrister and chairman of the county of Antrim, and I am often in his court.

1856. What proportion do the expenses in Antrim bear to those in Dublin?—I think they are extremely small; but I have never seen the items.

1857. I suppose the revision for Belfast is included in that for the county of Antrim?—Yes, it is. I may, perhaps, be permitted to state that I agree with those gentlemen who think that the magistrates at petty sessions form the most convenient and best tribunal for the revision of these jury lists. The chairman has, really, no information before him. Of course it is different in the case of the parliamentary voters' lists, because there are parties on both sides in most constituencies who challenge the qualification of each party, and evidence is given which enables the barrister to say whether a man ought or ought not to be on the list. However, with regard to the jury list, no one cares about it; the desire of persons is rather to be off than upon it. There is no machinery in the chairman's court, or in that of the court of quarter sessions, for sifting the lists, whereas the magistrates at the petty sessions have the collectors before them, and they know the localities and most of the persons, therefore I think that is the best tribunal. And, besides that, I see it is the tribunal selected by the proposed English Juries Bill now pending in the House of Commons. I think it is most desirable that the law should be the same, as far as possible, in both countries.

Mr. *Downing.*

1858. Are you not aware that the chairmen of counties receive an addition to their salaries of about 100 *l.* a year for revising the lists?—I believe so, but I do not know the exact sum.

1859. Now, let me call your attention to the 16th section of the Act of 1871, as to the payment of the expenses for printing, and any other work done by the clerks of unions; that is paid by the guardians out of the poor's rate, is it not?—Yes.

1860. And the expenses of the Act, so far as the same shall be incurred in connection with the duties imposed on clerks of the peace, and any other expenses, are to be paid out of the county cess?—Yes.

1861. The whole of that is imposed on the occupiers?—Yes; so far as the poor's rates are concerned, a proportion of that would be payable by the landlord.

1862. But that is so at all events; that all expense, except what is incurred by the clerks of the union, is paid out of the county rates?—Yes.

1863. That is imposed on the tenant, is it not?—Yes.

1864. And the tenant has no right to demand any portion of it from the landlord?—Yes; but it is otherwise with what comes out of the poor's rates.

1865. Can you see any reason for that distinction being made?—No.

Chairman.

1866. Are you aware that the county rate is all paid by the occupiers in England?—I am not aware of that.

Mr. *Downing.*

1867. However, if it is unjust it ought not any the more to be applied to Ireland, ought it?—I can see no reason for the distinction.

Thursday, 4th June 1874.

MEMBERS PRESENT:

Sir Michael E. H. Beach.
Mr. Bruen.
Viscount Crichton.
Mr. Henry Herbert.
Marquis of Hartington.
Mr. Law.
Mr. Mulholland.
The O'Conor Don.
Mr. Plunket.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, IN THE CHAIR.

Mr. JOHN NORWOOD, LL.D., re-called; and further Examined.

Chairman.

1868. I THINK you have some addition to make to the answer which you gave when last examined, with reference to the expenses of revising the jury-list in Dublin?—Yes, I think that would come under the head of Question 1823, where I was asked "Can you tell the Committee on what principle the remuneration to the rate-collectors was given to them." I found on going back to Dublin, that on the 8th of October 1873 the Collector General of Rates, Mr. Denis Moylan, addressed a letter to William J. Henry, Esq., the town-clerk, giving the items and particulars of the preparation of the jury-list in his department.

1869. Will you kindly read that letter?—It is under date of the 8th day of October 1873. "Dear Sir, be good enough to bring my claim for compensation and expenses incurred in connection with the preparation of the list of jurors 1873, for the county of the City of Dublin, before the Municipal Council. I have to observe that the duties which I am directed to perform have been increased by the "Juries Act (Ireland) Amendment Act," passed last Session, and would respectfully request that the corporation will take this into account when considering the amount to be awarded me as compensation, when I hope they will not consider the amount I asked for last year (200 *l.*) excessive. I forward herewith vouchers for the amount claimed for expenses, viz., printing, 42 *l.* 15 *s.*; posting, 10 *s.*; Mr. Hanlon, 50 *l.*; Mr. Taaffe, 40 *l.* With regard to the last two items I venture to think that the Council will not consider them exorbitant, when they have the details of the work done placed before them. In the first instance, the name of every male occupier rated at or over 20 *l.* had to be extracted from the rate-books, together with his address, title, quality, or calling, and the valuation of the premises, the address being this year repeated in a second column (which has slightly increased the expense of printing), then with the assistance of the collectors, the names of persons exempted from service had to be eliminated, and the remaining names placed in alphabetical, dictionary, order. The latter portion of the work was last year executed by the clerk of the peace, but by the Act of last Session was transferred to my department. I need not point out that it required very great care and trouble, and took a considerable amount of time; then a copy had to be made for the printer, and one to be supplied to the clerk of the peace. This work could only be intrusted to officers possessing great experience and thoroughly conversant with the preparation of such returns, and like all work done after office hours, should be liberally paid for. I am, dear Sir, faithfully yours, *Denis Moylan*, Collector General of Rates." That was enclosed to me in a letter under date of the 3rd of June, in which he says, "Although I did not consider the remuneration awarded at all adequate, still I bowed to the decision of the corporation." "However, if the charges shall be removed from the local rates to the Consolidated Fund, I shall not seek to re-open the question as to the annual remuneration to be paid to me and my officers, but shall be satisfied with the scale fixed by the corporation"?—I stated that 100 *l.* had been given to Mr. Moylan, but I find on referring to the accounts it was 150 *l.*

Chairman—continued.

Mr. *J. Norwood*, LL.D.

4 June 1874.

1870. Is there anything else which you wish to state to the Committee?—I see a clause in Mr. Lopes' Bill, which I think might be very usefully inserted in a Bill for Ireland, namely, allowing the judges to make general orders, from time to time, for the proper working of the Act; there are some instances in which I think it would be useful to allow the judges that power; there is also another matter: one reason why the jurors do not wish in civil cases to attend in court, especially merchants and persons of that class, whom it is very desirable to have acting on juries, is in consequence of the inadequacy of the remuneration. I find in the English Bill, which was repealed by the short Act afterwards, that a very much more adequate scale of remuneration was given to the jurors; but now the common jurors in Ireland in many cases have to remain two or more days, one day at least, considering the case, and the sum of one guinea is divided among them; on the other hand, special jurors have to consider very important cases, and they receive a guinea each, perhaps for one, or two, or three days' consideration of an important matter. I have heard the judges express their regret that they had no authority to award a greater remuneration to them. It is of very great importance that a good class of jurors should be induced to attend, and I have known that cause to operate against the attendance of proper jurors.

MR. ARTHUR HAMDILL, called in; and Examined.

Chairman.

Mr. *A. Hamdill.* 4 June 1874.

1871. WHAT position do you occupy?—I am at present chairman of the county of Roscommon; I was previously chairman of the West Riding of the county of Cork.

1872. How long have you been in those positions?—I was nearly three years chairman of the West Riding of the county of Cork, and I have been now for more than two years chairman of the county of Roscommon.

1873. Have you had experience of the working of the jury law before Lord O'Hagan's Act and since that Act was passed?—Yes; I should also state that I was a barrister going circuit for 20 years and more; I therefore have had a great deal of experience as a circuit barrister and also in the city of Dublin, besides my position as chairman of the two counties.

1874. What is your view of the effect of the change introduced into the jury law by Lord O'Hagan's Act?—With some little alterations I think it is a most beneficial Act; the present system is one that will create great confidence in the public when properly administered and carried out.

1875. Had you any fault to find with the working of the old system?—Under the old system we almost always saw the same faces in the jury box, and very often knew before a case was opened what the result of the trial would be.

1876. Had you frequent complaints to make at that time of the incompetency of the jurors?—Not so much the incompetence of the jurors as of the mode of selection of the juries, because, generally speaking, the competent men were put high up in the list, and we never could know whether the members of the jury were illiterate or not. The foreman was generally a man of superior intelligence; but the selection at that time was exceedingly objectionable; the sheriff often was equally powerless; the lists were given to him by the constable of each barony, who was assisted by the cess collectors, who often returned persons without expressing the full qualification which they ought to have. I was junior counsel in 1861, when an application was made to the Court of Queen's Bench to quash the lists of a barony in the county of Armagh, because on that list containing 95 names the names of 74 persons had not expressed therein the qualification required by law; two of the judges were of opinion that we had made out a case for a *certiorari*, and two other of the judges thought we had not. My colleague was Doctor Hancock in that case. I was also junior counsel in the case of the sub-sheriff of that same county against the editor of the "Nation," in the action of Hardy *against* Sullivan for libel on the sub-sheriff. He satisfied the court, and obtained a verdict. He proved that the fault lay not with him, but with the mode in which he was forced to take the lists as they were presented to him. I assume that the last case is reported. The other case is to be found in "6th Irish Jurist, New Series," page 212. There are two recent Acts of Parliament, Lord O'Hagan's Act of 1871, and the other of 1873, last year's Act, raising the qualification. The latter gives a better class of men as jurors than under the Act of 1871.

1877. But you consider, I think, that Lord O'Hagan's Act improved the jury list by making it represent really those who ought to be upon it?—Yes; it produced full confidence in the people that they would have a fair and impartial trial, which is the scope of trial by jury.

Chairman—continued.

1878. Did you find in any cases that came before you since the passing of Lord O'Hagan's Act in 1871, that incompetent juries appeared in the box occasionally?—I cannot say incompetent juries, but occasionally an illiterate person appeared under the Act of 1871. Since the Act of 1873 I find, by the return which I obtained from the clerk of the peace, that for the year 1873 I tried in the county of Roscommon 38 criminal cases, and the judges of assize in the same year, in the same county, tried 12; the change of qualification being at this time last year, namely, in June 1873, I was forced to send three or four of those 12 on to the assizes, because the jurors were summoned under the Act of 1871, and I was unable to try those cases. I should say, speaking of those 38 cases tried before me, that I had not the least dissatisfaction with any case but one, and that was a case on which any judge and jury might differ. It was upon a question of fact; if I had been a juror I should have found differently, but it was a question of the credit of the witnesses, and the jury had a better right than I had to exercise the privilege of doubt, and perhaps they formed a sound opinion. It was a case of assault, in which the prosecutor swore strongly against the accused; but he was contradicted by witnesses in certain respects, and I assume that the jury disbelieving him in certain points disbelieved him wholly.

1879. Have any cases come before you since the passing of Lord O'Hagan's Act in which there was room for any religious or political feeling?—No; I am not in a county where there is any political or religious feeling, but I know that on the north-east circuit there are always cases of that kind.

1880. Now will you be kind enough to inform the Committee the effect of the amending Act of 1873?—The effect of it is that it has lessened the number of jurors considerably; it has reduced them from 1,077 down to 618 in my county of Roscommon, and of those, 183 form the special jurors' book, leaving 435 common jurors for the whole of the work of the county. I hold 10 criminal sessions in the year, and considering that the Acts of 1871 and 1873 prohibit special jurors serving on common juries before the chairman, I am limited to that 435 out of whom I must get my juries. A certain per-centage must be taken off for casualties, sickness, absence, and so on, and when you consider that 60, or at least 50, jurors are summoned by the sheriff to each of those sessions, 10 times 50 makes 500, so that the rotation comes round upon them very often, and they are besides obliged to attend at the assizes, and the jurors complain of this frequent service. I was going to suggest this to the Committee; looking at the Act of 1871 you will see that there is a power given in certain counties to put on the jury persons who hold tenements rated at the annual value of 12 *l.* or upwards, situate in towns and villages. Now that is a power given to one class of counties, such as Armagh, Dublin,

Chairman—continued.

Dublin, Antrim, and so on, but it is taken away from another class, whereas a 12 *l.* tenement in one of the towns of Roscommon would be valued at perhaps 20 *l.* in Belfast?—I think that if, with a 12 *l.* annual value, a jury can be qualified in those richer counties, it ought certainly to be so in other poorer counties.

1881. Can you inform the Committee what is the difference between the valuation and the actual rental in the county of Roscommon?—I cannot tell that. I think it is something less than a fourth difference between the actual value and the rental. I inquired from the deputy clerk of the peace of my county, supposing there was a 12 *l.* rating for tenements in the towns or villages, what that would add to the number of jurors, and he says that in his opinion it might add from 100 to 120; he perhaps may over-estimate it; but that is his view on that question. There is on the jury list in the schedule to the Act of 1871 an exemption for all persons who are licensed to distribute stamps, and for public officers paid by authorised fees or per-centages. Now there are a certain number of persons in every county who sell stamps in the way of trade, and I think they ought not to be exempted; one person should be exempted; that is to say, the stamp distributor in chief, because the stamp office employs the same person for two or three counties; but with regard to a person behind the counter who merely sells bill stamps, or even lease stamps, I do not see why he should be exempted.

1882. Do you think that any other exemptions should be abolished?—Yes; the barony cess collectors and the poor rate collectors should be exempted; now they are all exempted, because they say they are public officers paid by authorised fees or per-centages. I think in the agricultural and grazing counties in Ireland, the men who are appointed poor rate collectors and cess collectors are about the most intelligent individuals we have, and well qualified to serve on juries. With regard to baronial constables and cess collectors, there is nothing in their duties to prevent their serving on juries, because the fiscal duties of every county are inquired into at least two days before the sitting of the Commission, and the return made by the baronial constables and the cess collectors must be made before the fiscal business concludes.

1883. Are there any other exemptions which you would propose to abolish?—No; but I should state that according to the opinion of my deputy clerk of the peace it would be very desirable to remove these exemptions; and I think also you might very safely include persons having a 20 *l.* annual freehold, or 20 *l.* annual interest arising out of leasehold who are not otherwise rated, and who live in the county, in the obligation to serve on juries.

1884. Have you any idea how many jurymen that would add in Roscommon?—In Roscommon this would add very few, because almost all that class of persons are resident and otherwise rated; but in Dublin, Antrim, Cork, and elsewhere, there must be a considerable number of people who live in the county, who do not reside on their property, but have small incomes derivable from it.

1885. Those alterations which you suggest would not make any large addition to the list in your county, would they?—Perhaps 150 altogether.

Chairman—continued.

1886. Do you think that that would be sufficient for the work?—Yes, it would in this way; at present all classes of jurors, special and otherwise, including the magistrates, are bound to attend the assizes; the assizes come but twice a year, and the proportion of cases tried at the assizes in my county is but one-fourth of those tried at the sessions. At the sessions the magistrates are excluded, because it is their jurisdiction to sit with the chairman, and special jurors are excluded except when acting as grand jurors; I do not mean for a moment to suggest that the grand jurors should be abolished, because I think they are very useful; but the distinction between special and common juries should be for session purposes abolished; I think they should be all summoned to the sessions together, and the first 23 persons who answered to their names should be put on the grand jury, because there is far less intelligence required to find a true bill on *ex parte* statements uncontradicted, than there is to discriminate between conflicting evidence sworn to by different persons apparently equally reliable. My object would be to mingle the superior class with the inferior class, and produce more intelligence in the jury box than there is at present. My reason for suggesting a 12 *l.* rating in towns and villages is, that people who occupy houses of that class are generally people in some sort of business or dealing, and peculiarly intelligent and sharp; much more sharp perhaps than a 30 *l.* farmer.

1887. I suppose that your 12 *l.* rating would be confined to the house alone?—Yes, to the tenement alone. What I state is with a view to my own county, but perhaps a 12 *l.* rating in other places would not produce the same class of intelligence; perhaps also the Committee might think 12 *l.* too low, and fix on a 15 *l.* rating.

1888. What are your reasons for being so anxious to preserve the grand jurors at quarter sessions?—I have had cases before myself, in which bills were thrown out when frivolous cases were brought forward; it saves a man from a great deal of indignity if, instead of putting him into the felon's dock to be tried, they throw out the bill where his opponent only is heard; that being the very strongest proof that there is no real case to go to a jury.

1889. But you do not think that it would be possible to have one qualification for jurors at the assizes, and another qualification for jurors at the court of quarter sessions?—No, I would put them all on the same footing; of course the civil business at the assizes should be conducted as it now is; I only speak of the criminal business, such as that which comes before me; I have 23 people in the grand jury box; they are a very short time finding their bills, and then they disappear; then I am left with the lower class of men; I would put the first 23 that answered to their names on the jury, and that would be partly for the purpose of promoting a better attendance among the grand jurors.

Mr. *Plunket.*

1890. Do I understand you to extend that observation to the assizes at present?—No, it is only to the court of quarter sessions; the grand jury at the assizes is composed of a totally dif-

Mr. *A. Hamdll.*

4 June 1874.

Mr. *Law*—continued.

ferent class of men, many of whom are not resident in the county at all, but have property there.

Mr. *Law.*

1891. You would propose to take the grand jury from the general list, instead of from the special jurors' list?—Yes, the first 23 that answered to their names: you would then have on the common jury some of those who might have been special jurors.

Chairman.

1892. Can you speak to anything that may have occurred at the assizes at Roscommon, as bearing upon these questions?—No, I know nothing about the assize business in Roscommon.

1893. I think you said that the Act of 1873 had improved in some points the Act of 1871?—Yes, by raising the qualification it gave a better class of men; besides, it struck out illiterate persons, and persons of that kind.

1894. But if you were to make the alterations which you now suggest, would you not be in danger of having illiterate persons on the jury?—No, the exemption against illiterate persons would still continue; I think, with regard to the mode of revising the lists, there is another method by which expense might be saved, and by which the lists could be revised, and everything could be learnt about the men to serve on juries better than by any other machinery; there are in the county of Roscommon, I believe, 21 petty session districts; the clerk of the peace, first sends his precept to the clerk of the union; in that precept the clerk of the peace should send to him the names of the townlands in each of those petty sessions districts to be put in separate lists; if those lists were sent by the clerk of the union to the head constable in each of those petty session districts, or the constable in authority, he would, with the aid of the persons about him, revise that list, and know every man on it, whether he could read or write, and so on, or whether there was any objection to any of them. Those lists should come up on a particular day, for revision by the magistrates, and not at a special sessions for the purpose; the magistrates, when they have a special sessions, do not sometimes attend; but if you fix for such revision the first sessions in the district in September, generally the magistrates do attend for ordinary business, and the stipendiary magistrate will attend, and they could in a short time correct all the lists, which could then be sent to the clerk of the peace for further revision by the chairman. Those lists should then be put up in some conspicuous place in that petty session district, and if any person saw the name of anyone on that list who should not be there, he might go before the chairman to get that name struck off, or to get his neighbour's name put on.

1895. You would first of all have a revision by the magistrates in petty sessions, and then a revision by the chairman?—Yes; the duty would be performed by the head constable in a short time; if there was any expense in attending the chairman, it would be only the ordinary expense of a policeman, according to his rank, which would be thrown on the Consolidated Fund, and not on the poor-rate of the county. I think that would be much cheaper and better than the present system.

Chairman—continued.

1896. In what way do you think that the summonses could best be served?—I would say that the police would be the fittest persons to serve them; they are an admirable body of men; there are some exceptions, but as a rule I think people have confidence in them.

1897. You think that it would be better to serve the summonses through the constabulary than by a registered letter through the post, do you?—Yes, I think it would be better in some parts to serve them through the constabulary than by a registered letter; in a town that would do, or in a place where there is a post office, but in country districts a registered letter may not be called for or discovered until after the exigency is over. Besides registered letters are sometimes given to servants and boys and other people who come for them, and it would be very difficult to bring home the knowledge that the letter had reached the hands of the person in time to attend.

1898. Does not a registered letter require that a form should be signed by the person who receives it?—If it requires that the individual himself should sign it, that meets the objection; but when servants are well known the letters are given to the servants, I think.

1899. Is there any other suggestion which you wish to offer to the Committee?—I also think that the clerk of the peace, besides making out the general jurors' book, should have a duplicate book retained by himself, and when the sheriff summonses a man the list containing those summonses should be sent to the clerk of the peace that he might mark in his duplicate book the place or places for which the party was summoned, so that any individual who thought he was called upon too often to serve might go to the duplicate book in the custody of the clerk of the peace and examine it and see whether he had or had not been summoned out of his regular order.

1900. Are you aware how the summoning is conducted in your county. I understand you to say that owing to the list of jurors being a small one, persons were too frequently summoned in past years; was that so?—I cannot say how that was done in my county in past years, because I was not in my county until after the Act of 1871 was just about being introduced. I have no knowledge of the working of the old system in the county of Roscommon.

1901. But what is the system of summoning as it at present exists?—The mode is generally service by one of the bailiffs; sometimes people say they were not served, but the bailiff says they were, and it is very hard to arrive at the truth.

1902. You said that you held during the year 10 criminal sessions, and that about 50 jurors were summoned to each; how many of those attend?—I cannot say how many attend; for so long as I find that the jurors are sufficient to work the business, I do not complain of non-attendance. If 50 were summoned, and the business was done with two or three juries, the others might be in court, and I should not know. I was going to suggest, in connection with what I said about putting on the first 23 that answered to their names, that the list should be called over before the grand jurors should be sworn, and a fine imposed on those who did not attend, and then in order to prevent what, I suppose, could never very well be got rid of, namely, canvassing. I certainly would advocate that the names of all who attended should

Chairman—continued.

should be put into a box, and the jury balloted for just as it is in the civil courts.

1903. Have any fines been inflicted on jurors for non-attendance in your court?—Frequently.

1904. And have they been paid?—In some few instances they have. They have the power of appeal, and the appeal is not to the sessions at which they are fined. The appeal is brought before me at a subsequent sessions, and then if I find that the party was not at home when the summons was left, or away on some necessary business, or some other reason that perhaps might appear to me a just reason, I remit the fine; in other cases I exact it.

1905. Can you inform the Committee how many jurors there were on the jury list of your county before the passing of Lord O'Hagan's Act; next under Lord O'Hagan's Act; and then under the Act of 1873?—In the year 1865 (I take this from a return made by the sheriff to me), 694 was the number. In 1867 it was 428. In 1870 it was 460. In 1872 it was 472. In 1873 it was 1,075; and in 1874 it is 618; out of which you have to deduct 183 for special jurors, as I have stated.

1906. Is there any other point to which you would wish to draw the attention of the Committee?—Jurors sometimes complain to me that they are brought a great distance from home; this rather applies to the case where in the civil bill division there are two criminal towns, and the chairman sits twice a year in one and twice a year in the other. The result is that under the alphabetical arrangement a juror may be brought from an extreme distance beyond a town nearest him, and have to pass through that town to another town; in some of the larger counties, such as the West Riding of the county of Cork, Donegal, Mayo, and Galway, I thought there might perhaps advantageously be a further subdivision, dividing the civil bill division into two, and making the jurors within a certain number of parishes or baronies attend only the particular town nearest to them; but that could only apply where there was a very large stretch of county; there is one division in the West Riding of Cork called the Bantry division; that contains two towns, Skibbereen and Bantry, for criminal business at the court of quarter sessions; one portion of the county went down as far as Berehaven, 24 miles beyond Bantry, and it would be a great hardship on a person coming so great a distance as 24 miles to Bantry, and then have to go on 17 miles to attend the sessions at Skibbereen; in this way a person from the extreme point of the Skibbereen district might have to pass through Skibbereen to go to Bantry; knowing the county and knowing the position of the two towns, I take that as an instance; but then there is this objection, that possibly there might not be a sufficient number of jurors in each of those sub-districts; and again, there might arise cases connected with family feuds or disputes about land in which it might be difficult to get a jury free from bias; in that case the chairman should have the right and power either to send the case on for trial to the assizes, or to the other sub-division of that larger division.

1907. Has he no power of that kind now?—The only power he has now is, if a witness is sick or unavoidably absent that he can send the case on to the assizes.

Chairman—continued.

Mr. *Bruen.*

1908. That simply amounts to giving the chairman power to change the venue, does it not?—Yes, in that case it would be so; in changing the venue we must consider this, that there is a certain amount of expense put on the county, because the witnesses for the prosecution attend at the particular town, and then they would have to attend at the other town also, which would increase the expense.

1909. But you suggest this as a remedy for the acknowledged disadvantage which would arise from trying those cases in which there was a local feeling in the division, by persons living in the division at the quarter sessions?—Yes, I do.

1910. Under the present alphabetical arrangement and the present arrangement of civil bill business that is an acknowledged evil, is it not?—Just so. My suggestion of a sub-division of the larger division is for the purpose of the convenience of the jurors, because the first object is to get a fair and impartial verdict; the next object is to get it with least inconvenience to the jurors, especially as the criminal jurors are not paid.

1911. Now under the jury system, antecedent to the passing of Lord O'Hagan's Act, that inconvenience did not arise, did it, or at least it was not felt so much?—It was not felt so much, but it may have arisen.

1912. It did not arise within your own knowledge when you were chairman of the West Riding of the county of Cork?—No, it did not arise within my own knowledge. I have known in the West Riding of the county of Cork one or two cases where before those Acts of Parliament were passed very strange verdicts were given. There was one case where my predecessor in office had been chairman, and where, on inquiry afterwards, we found that one of the jury was connected with one of the criminals in the dock. It was an assault case, and they sometimes do not think that an assault is a very great offence.

1913. That was under your predecessor, you say?—Yes, under my predecessor.

1914. Are you aware whether he questioned the sheriff as to the reason why he had summoned that juror?—I cannot say. I am quite sure that the sheriff did not suppose that the juror was in any way implicated.

1915. There have been some complaints made in the course of this inquiry against the sheriffs with regard to their way of summoning jurors; have you ever had any experience of mal-practices on the part of the sheriff?—No, I have not; I believe that the sub-sheriff is incapable of any thing of that kind; but I do not say the same, perhaps, for those whom he may have to employ, though nothing has come under my notice.

1916. Do you mean in serving the notices?—Yes, in serving the summonses.

1917. That is a question of service rather than a question of discretionary power on the part of the sheriff?—Entirely so.

1918. With regard to the service of summonses, you recommend that they should be served by the constabulary, do you?—I do. Some people object to that; but that is what I recommend.

1919. That would be considerable expense,

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would it not; personal service must always be far greater expense than service by post?—Yes, but I would effect it in this way: the sheriff, knowing the district, should send the summonses to the head constable of the petty sessions district. Perhaps there would not be more than three or four persons to be served in that district. One constable would be enough to serve them, and by a declaration before a magistrate attached to the summonses, he would declare that he had served them, and after that have them, together with the declaration, returned to the sub-sheriff.

1920. That would no doubt be an effectual service, but an objection has been made by some of the witnesses examined before this Committee with regard to the appearance of the constabulary going round serving them, that it might be felt objectionable by some people and might cause some distrust?—I do not share in that opinion at all.

1921. There are some parts of the country where, no doubt, the service of summonses by post would be effectual?—Yes, I would not suggest service by the police in all cases, but only in distant parts. A policeman is bound to know everyone within his own police district. They have the means of doing those things, whereas other men may not know where they have to go; sometimes he may have to go 20 miles to serve an individual (he may or he may not know); but I would have service by post in some cases and service by the police in other cases.

1922. You would give a discretion to the sheriff to adopt either of those ways?—I would; I would not limit him to either mode of service; I should state that I was once about fining a man for non-attendance; it was represented to me by the sheriff's officer that he could never serve that man; that just before the sessions or the assizes the man kept his place closed and kept a fierce dog, and he could not get near the house; he was powerless; but I think if a policeman had the summons he would find an opportunity of serving it; I was going to suggest also that there should be a record or exemption book kept, and where a person claimed exemption for any cause whatever a record should be kept of the reason for the exemption.

1923. That is to say, exemption by the judge?—Yes, exemption by the judge or by the magistrate. I mean a column under the head of "Reasons why exempted" (after setting out the name), "Because he is a minor; because he is over age, or imbecile, or illiterate;" and then it could be afterwards checked whether those reasons were really true reasons; I find very great difficulty indeed in ascertaining a person's age. I have heard a person say that a juror was 60 years of age, and I have heard another say that he was not 60 years of age; the individual does not come before me himself.

1924. You find, I suppose, sometimes very great difficulty in revising the lists?—Yes, sometimes I do.

1925. That leads you, I suppose, to recommend that the lists should be first revised by the magistrate at petty sessions?—No, not exactly that. I think you should have the check of the clerk of the union, giving the proper names and the proper rating qualification; then I think the head constable would in an hour or two go over that list, which would not in each district contain more than 100 names, and perhaps not

Mr. *Bruen*—continued.

70; there are 21 petty sessions districts; that would make about 2,000 names to be revised, whereas we have not more than 1,000 or 1,200 at present, and then we reduce those; some are duplicates; I meet the same individual two or three times in my county; he is rated in different parishes and different unions. We have a great deal of trouble with those duplicate names, and if some such record as I have been suggesting was kept, it would be serviceable.

1926. Would you require the constable who revised those lists to do so at the petty sessions?—Yes, I would have him first do so in his own house with the assistance of the people about him, and then bring that list on some day to be named, say the first sitting in the month of September, before the magistrates, as part of their ordinary duty at the petty sessions court; he should hand up the list, and the magistrates should make such inquiries as they pleased and put their names to it; the list should be then posted up in the usual place at the police office, with a notice appended that if any person on the list thought that he ought not to be upon it, he should have a right to appeal in October to the chairman, and on the other hand if any person's name was omitted that name should be brought before the chairman by anyone knowing him, and it might be put on.

1927. You said that Lord O'Hagan's Act gave confidence to the public that they would have a fair and impartial trial?—Yes.

1928. Then you do not agree altogether with the evidence that was given last year by Judge Lawson. He was asked, "You formed the opinion that they were generally not men capable of forming an intelligent opinion upon a difficult case"; and he replied, "They manifestly, most of them, were quite incapable of understanding any case of difficulty." You do not agree with Judge Lawson in that respect, do you?—I am speaking from my own experience and Judge Lawson is speaking from his experience. In my own court I find them not only intelligent, but exceedingly willing to be instructed, most attentive, and most discriminating in their verdicts. But I speak of my own court, I do not presume to speak for others.

1929. But still your statement was general that Lord O'Hagan's Act gave confidence to the public?—Yes, that is my opinion; I mean including the amended qualification; I thought the qualification was too low under the first Act.

1930. Under the first Act, then, you think it was not calculated to give that confidence to the public?—It was too low, and an inferior class, though very honest men, were put on the jury under the first Act.

1931. Then do you mean that the whole of this change has been effected by raising the qualification from 20 *l.* to 30 *l.*?—Not the whole of it; you get superior intelligence, it is true, but you can get honest men in the lower strata of society as well as in the more respectable class.

1932. You said that you used to see the same faces in the box very often before the passing of Lord O'Hagan's Act; did that refer to the whole of the country or to Roscommon?—I was not chairman of Roscommon at that time; I was referring to the faces I had seen in my experience as a barrister on circuit.

1933. That evidence which you gave with regard to seeing the same faces always in the box,

Mr. *Bruen*—continued.

box, and knowing what the decision of the trial will be beforehand, refers to your experience as a barrister in going circuit?—Yes; I do not think I used the word "always"; I used the word "generally," I think.

1934. You were employed frequently in very important cases, I think, in going circuit; had you reasons to be dissatisfied with the verdicts of those juries which you saw so continually in the box?—Indeed I had reason to be dissatisfied with their verdicts; I will not say with all of them; with some of them, certainly.

1935. You think that they were in error in those verdicts, do you?—I certainly thought so; but I am liable to form erroneous opinions myself.

1936. That error did not arise, in your opinion, from want of experience as jurors?—No.

Mr. *Plunket*.

1937. If I understand you rightly, it is your proposal that the grand jurors at the sessions should be composed of the first 23 names that answered on the general panel?—Yes.

1938. Do you not think that it would be rather an unwise thing to intrust the question whether a prisoner should be sent for trial to such a jury without the continued assistance of the judge or any other person to control them?—The grand jury are not controlled by the judge at any time.

1939. Of course I know that. But you propose to admit to the grand jury jurors on the ordinary panel; do you think that you could depend implicitly on them to say whether a prisoner should be tried or not without having the assistance of anyone to control or guide them?—That is in fact the state of things that exists, and has always existed. The grand jury is sworn, and it is the duty of the judge to inform them with respect to the nature of the cases to be tried; that is to say, they are to find true bills or not; he instructs them as to the nature of the offence, and what their duty is; and then they go into a room and find the bill, or no bill, as the case may be.

1940. But my point is this: at present the grand jury being supposed to be more educated and intelligent, and of a higher class than ordinary jurors, are intrusted after such directions from the judge to say whether the trial of a prisoner shall proceed before the petty sessions?—Yes.

1941. And then if a true bill shall have been found by the grand jury, the petty jury have the assistance of the judge?—Yes.

1942. Would it not be rather a dangerous experiment to give a jury, which might be entirely composed of ordinary jurors on the general list (for the first 23 names might be all ordinary jurors), the power of letting off the prisoner entirely?—That is a power which the grand jury, as now constituted, have, if they will do it; do I understand the question to mean this, that supposing the whole 23 names were common jurors, and that they were sworn as grand jurors, that intrusting them with that discretion would be dangerous. If so, I really confess, from what I see of the common jurors as to their intelligence and so on, that I think they are equal to that duty, and equal to a great deal more; quite as equal to understand when a man should be put on his trial as men of a higher rank; my object is to get all the intelligence that I possibly

Mr. *Plunket*—continued.

can into the common jurors' box, where greater intelligence is required. In the grand jury room they hear a man state, for instance, that he was struck by a certain person, and they return a true bill against the prisoner. The evidence is all on one side, and there is no great mental effort required to comprehend it. Greater intelligence is needed in the box, where there is a conflict of testimony; but the question you put is, whether it was to be supposed that jurymen from a lower class would act with such turpitude that they would let a man off when they thought he was guilty; I think not.

1943. But I do not put it so strongly as that; we have had a great deal of evidence before this Committee that even under the amended Act there is sometimes considerable difficulty in getting a verdict against a prisoner (even when a judge is presiding), owing to sympathy on the part of the jury, or unwillingness to convict from some such cause. Now the question I put is, whether it would not be rather a dangerous experiment to intrust that power of letting a prisoner go free to a jury composed entirely of that class of persons, and acting entirely without the influence of public opinion, and without the influence of a presiding judge?—That is a view of the case which I confess I certainly did not contemplate for a moment; I do not think any grand jury would do that; they must act either according to their consciences or against their consciences. If they act conscientiously and liberate the party when they think there is no case, they do their duty so far; but if they act dishonestly it is a disgrace to them, and it is an act which I cannot believe that any jury in my own county would be guilty of; I do not believe any of our juries, whether common or special, would do it; but if that was thought possible there might be some arrangement by which a portion of the grand jury should be formed from the special jury panel, while the remainder would be formed from the panel of the common jurors.

1944. But do I really understand you to say that you cannot imagine the case of a jury acting as a grand jury if it were composed entirely of petty jurors at sessions left to themselves in their own grand jury room uncontrolled except by such instructions as the judge may have given them, and responsible to nothing but conscience; do I really understand you to say that you cannot imagine the case of such a jury letting off a prisoner of their own social class with whom perhaps they have a personal acquaintance, though he ought all the while to be put on his trial?—That is putting it very strongly indeed; it certainly never would have entered my mind that they would do so, but that may be a dangerous experiment, as you say.

1945. Do I understand you to say that you have not had much experience of circuit juries since the passing of Lord O'Hagan's Act?—Just so; not so much except in the civil courts. At the time that I was made chairman I was made Queen's counsel, and I have ceased very much to act in the criminal courts.

1946 It was principally with regard to the juries in criminal cases that you thought the working of Lord O'Hagan's Act was unsatisfactory, was it not?—No, it was before his Act.

1947. Then you do not contrast your experience of the jury system before the passing of Lord O'Hagan's Act in criminal cases with your

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Mr. *Plunket*—continued.

experience of the working of the jury system since you acted on circuit?—Not to any great extent; I am only an observer now.

1948. With regard to sessions juries, had you had no experience of the county of Roscommon juries before Lord O'Hagan's Act at all?—No; the very first time I sat was under the old Act, and the second was under the new Act.

1949. Therefore you institute no comparison in that respect?—No.

1950. As I understand your evidence, you are clearly of opinion that the first revision of the jury list should be before the magistrate at petty sessions?—Yes, I would say so; I think it would be a very good tribunal, with a further revision before the chairman.

1951. You think that that process would secure the confidence of the country, do you?—I do not think that it would injure it, though I have heard a different opinion stated here; I speak with reference to my own county; I may be wrong, but that is my present opinion.

1952. But you extend that also to your knowledge of the north-eastern circuit, do you?—Yes, I do; I see nothing to the contrary. I think the mere fact of summoning a man to act as a juror is different from summoning him as an accused man to appear in court; it is a ministerial act that no one can see anything wrong in. The police do already summon parties for certain offences committed against their own class, and so on. I do not know that it creates any great ill-will; the party who serves the summons is not generally the man who makes the complaint, or who appears before the magistrate to support it.

1953. But my question was rather directed to the revising of the lists by the magistrate, assisted by the stipendiary magistrate?—I see no reason to object to that. My reason against holding special sessions for that purpose alone is that the magistracy is a cumbrous and shifting body of uncertain attendance, but if it is an ordinary petty sessions the stipendiary magistrate must be there, and generally speaking one or two others are with him, and going over the names would occupy very few minutes. Then I propose that that list should be posted up outside the police barracks, or wherever is the usual place, in order that every man may see that he is on the list, and if he has any objection he has an opportunity of coming before the chairman personally. People come and say when summoned as juror, "I am over 60 years of age," and when I inquire how old they are, they say, "I am 61 years of age." The line between 60 and 61 or 62 is a very fine line, and the parties who summon the jury cannot tell. I am of opinion that 60 years is too low a limit. I would have said 65 at least, because I have found that some of the most intelligent and best jurors in the county have taken advantage of the 60 years' exemption. A man is in the prime of his judgment and intelligence at 65.

Mr. *Mulholland.*

1954. Would you see any objection to the constabulary serving summonses on jurors?—I think not. I have stated that I would permit the sheriff to serve personally in certain cases; sometimes I would use the police, but I would also permit, when the parties resided in towns, the service of the summonses by post; but in Donegal and portions of the West Riding of the county of Cork registered letters will not do; the

Mr. *Mulholland*—continued.

sheriff may have to send 60 or 70 miles to serve a man; my county is 60 miles long, and the sheriff's office is near one end of it, and the sheriff complains that he gets no adequate remuneration for the work done.

1955. Would you not be afraid, if you mixed the common and special jurors on the grand jury, that there would be an invidious distinction between the two classes, and that inconvenience might arise; are you aware that there has been a very strong reply given by Mr. Serjeant Armstrong on that subject?—No, I think not; the grand jury business does not detain them more than an hour or two, and perhaps, at most, three hours; then they go away, and their business is done. They are called upon to serve twice a year only on the county business. The whole of the business is done, or three-fourths of it is done, in the court of quarter sessions. According to the statistics of last year, there were 38 cases tried before me, and 12 before the judge of assize; the 38 cases were all tried by common juries. I think it is putting a little too much upon them, and sometimes they complain, and I want to equalise the duties a little. If you make the grand jury out of the special jury list, you can never get them to serve on common juries at the court of quarter sessions.

Mr. *Law.*

1956. The principal object which you have in this proposal is to get some of the special jurors, at all events, on the ordinary list for the trial of cases, is it not?—Yes, that is my great object.

1957. But that object might be got at without that change as to the composition of the grand jury, might it not; for if the grand jury for the sessions were still taken from the special jury just as it is now that would merely take 23 from the number, supposing you had a full attendance?—Yes, that is so.

1958. Then it is a separate consideration whether it would not be desirable to do away with the distinction between the sessions and the assizes; with regard to the liability of special jurors to serve on the general panel, and your object would be obtained, would it not, if the special jurors were not exempt from service in that way?—Yes.

1959. It is only the difference which has to be taken into account, and there would be seven or eight more special jurors liberated in one way than the other?—Yes. As I understand it, the sheriff summons about 30 special jurors to form the grand jury panel at the court of quarter sessions; you must always allow something for casualties. Sickness is generally the chief casualty; at least the chief excuse. Suppose there were 35 summoned, the residue over 23 should then go into the ordinary panels, and serve with the rest.

1960. How many grand jurors generally attend; is it 20?—I have been obliged sometimes to address 19; I put fines on in that case.

Mr. *Mulholland.*

1961. If only 19 attended, where would the surplus come from, in order to carry out your plan?—The others do not attend. In that case there would be no surplus.

Mr. *Law.*

1962. You complain, do you not, of the difference

Mr. *Law*—continued.

ference between the roll of jurors for the assizes and the roll for the sessions?—Yes.

1963. The special jurors are on the panel for assize purposes, but not on the panel for sessions purposes, I believe?—Yes, at quarter sessions all the special jurors are taken away, except those that form the grand jury; the magistrates, the special jurors, and the common jurors are all mixed together for the purpose of the assizes. You have got all the property, intelligence, and respectability for the assizes, and that is only twice a year. My object is to get as many special jurors to sit with common jurors as possible.

Mr. *Mulholland.*

1964. I thought you said that you would only summon 30 or 35 special jurors, and that after taking out the grand jurors you would allow the surplus to go to the common jurors; but I thought you also said that after 35 were so summoned only 19 attended, and that they were all required for the grand jury?—Yes; my answer must be taken in connection with the question. I was asked whether I had reason to complain of the short attendance of grand jurors.

1965. If you summon 35 and only 19 attend, there would be no surplus, would there?—There would not; I understand that the sheriff generally summons 30 for the purpose of getting the 23. When I get the 23, although others may be there, I do not want them. There may be an exceptional time when I do not get 23.

1966. Do you ever get 23?—Yes, I generally get 22 or 23; in fact, I make it a rule to get 23 if I can possibly do it. But I was saying that when once the 23 were obtained, if all the rest were bound to serve that would answer my purpose.

Mr. *Law.*

1967. The special jurors would be on the general list and they would take their chance to serve in rotation?—Yes, I think they should be summoned to serve as grand jurors or as common jurors, as the case might be.

Mr. *Bruen.*

1968. If you summoned a special juror to attend at the quarter sessions, you will of course allow that to count as service; then would you have enough on the general body of special jurors to do the work which is required from them at the assizes?—The Act of Parliament says that they must do the assize business, and that their service as grand jurors before me will not count.

1969. Do you wish, then, that their service before you as special jurors shall not count also?—I would wish it to count in case they served upon a petit jury.

1970. If you allow that service to count, surely you would diminish the number of special jurors who are available for service as special jurors at the assizes, would you not?—Yes, I would, in this sense; if they served with me it would count, but the mere attendance ought not, in my opinion, to count, unless they actually served on the jury.

Mr. *Law.*

1971. As I understand your idea with respect to adding to the list of jurors, to transfer Roscommon from Schedule 2 of the Act of 1873 to Schedule 1, would effect the purpose you aim at?—Yes; that is another way of putting it.

Mr. *Law*—continued.

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1972. Schedule 1 gives a rating of 30 *l.* in country parts and 12 *l.* in towns, while Schedule 2 gives a rating of 30 *l.* in country parts and 20 *l.* in towns?—Yes.

1973. With regard to the service of summonses, do you think that the police would be better parties to serve them than your own process servers at the court of quarter sessions, as has been suggested by some of the witnesses before this Committee?—I think that the policemen would be excellent persons for that duty.

1974. The others are entirely under your control, are they not?—The process servers would be a very good machinery no doubt, but I prefer the police; I think that the process servers of the court should do nothing but serve processes.

1975. Have you found when revising the list any trouble with regard to consolidating the ratings of particular occupiers?—Not much.

1976. Would it be an advantage if the clerk of the union, instead of returning A B as holding a dozen different tenements as separate lettings, were obliged to consolidate all of them; would it be worth while putting that duty on the clerk of the union, so that he should return them as rated for the aggregate of their property within the union?—That might be very desirable, because it falls very much on the chairman now; at least I have had to do it.

1977. It appears that at one of the late Antrim revisions the revision had to be adjourned; it was so troublesome a matter there that the revision had to be adjourned to enable the clerk of the union to go through that operation; was that so?—I think it would be very desirable to have it done beforehand.

1978. It has been suggested by some of the witnesses examined before this Committee that it would be desirable to diminish the number of towns at which criminal sessions should be held; what is your opinion on that point?—There is a difficulty about that. I have thought that where there were three criminal towns in one division it is too many; one too many at least. If there are only two criminal towns in a division, as the court does not sit always at each, but only alternately, it might be too long to hold a charge hanging over a man's head if the case was not tried quickly; and I would say that if there were three towns in a division, there should be only two for criminal business.

1979. That is a matter for the Queen in Council to regulate, is it not?—Yes; I may here state that in suggesting that the general panel should be made of the first 23 names that should answer, I do not mean to make out that the whole 23 should be common jurors. I should wish that they should be fairly mixed.

1980. Do you think it would be an advantage for the purpose of securing the attendance of jurors, to have the list of jurors who had been summoned called in court, and fines imposed instanter, as a matter of course, if they were not in attendance?—Yes, I would impose a small fine, by the Act of Parliament itself, with power to the chairman to enforce it in case of necessity.

1981. I suppose a small panel would do if it was a matter of certainty that those who did not attend would be fined, unless they could show good cause for exemption?—Yes; if it was known that the Act of Parliament imposed a fine, and that there was no discretion given to the chairman, the effect would be that they would all attend

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Mr. *Bruen*—continued.

attend better, and a smaller number need only be summoned, and the business would be done more quickly and better.

1982. In that way the better class of jurors, who rather avoid their duty, would be drawn in to attend, you think?—Yes.

1983. Would that apply to the assizes, or to the sessions only?—I think that the rule for the one should be the rule for the other also.

1984. I believe that you had very large experience before you became Queen's Counsel, in the conduct of criminal cases, on the north-east circuit?—Yes.

1985. Do I understand you to state, from your experience in those cases, that the then existing mode of summoning the panels by the sheriff was not satisfactory?—Not at all satisfactory.

1986. I suppose the north-eastern circuit is as severe a trial for the jury panel as any in any part of Ireland?—Yes, it is as severe a trial, no doubt.

1987. You also have had a great deal of experience at nisi prius trials in Dublin, have you not?—Yes.

1988. Did you see in Dublin, under the old system, the same jurors constantly reappearing?—Yes, certainly, in some cases; it was a kind of profession to be a juror.

Mr. *Bruen.*

1989. With regard to the choice which you wish the sub-sheriff to have of the means of serving summonses, you said you would give him the choice of the police or the post office, or the present mode of service. Now, if you gave him that choice, do you not think that he would always choose the cheapest?—He ought to do what was right.

1990. But your object is to have an effectual service, is it not?—Yes.

1991. How would you ensure that the sub-sheriff would not take the cheapest, and that you would thus lose the most effectual mode of service?—That must depend on the character of the sub-sheriff.

Mr. *Bruen*—continued.

1992. Would it not be a better plan if you gave the judge power to make general orders in which district the service should be by post, and in which it should be personal service by the police or otherwise?—That pre-supposes that the judge would make that order beforehand, because it must be a summons to attend himself. If I go to my sessions I must make an order beforehand. I must then have the list before me, and I must know where A, B, and C lived, and how far they were from the particular town or place to which they are to be summoned; that would be throwing very great labour on the judge or the chairman in a matter which is out of their sphere. That should be left to the sheriff, I think, entirely. I do not mean to say that if he chose one of those modes he should reject the other, but that he should use them all in a way which would effect the service best.

1993. But I rather doubt the effectiveness of your plan. If you give the option to the sub-sheriff, would not the desire on his part to save expense, lead him to choose the cheapest mode?—The only thing would be to impose a fine on the sub-sheriff in case there was non-service or bad service, supposing he chose to do it in the wrong way.

Mr. *Law.*

1994. Would you not suggest that it should be left to the judges to frame general rules from time to time for that purpose?—Yes.

1995. That is to say, instead of fixing it by Act of Parliament beforehand?—Just so. Of course there can be no objection to the judges making general rules, for I am one of those who think that as little discretion should be left to inferiors as possible; but if the judges make the rules it is a very different thing, for they are intelligent, wise, and learned men, and they know what the necessity of the case requires.

Chairman.

1996. Is there anything more which you wish to bring before the Committee?—I think not.

Monday, 8th June 1874.

MEMBERS PRESENT :

Sir Michael E. H. Beach.
Mr. Bruen.
Mr. Downing.
Mr. Henry Herbert.
Marquis of Hartington.
Mr. Mulholland.
Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, BART., IN THE CHAIR.

Mr. SERJEANT RICHARD ARMSTRONG, called in; and Examined.

Mr. *Armstrong.* 8 June 1874.

Chairman.

1997. I THINK you gave evidence before this Committee last year?—Yes.

1998. Since that time, in what circuits have you had experience?—In Leinster, the nortb west circuit, no other.

1999. When you were examined last year you expressed an opinion that some very decided alteration in the qualification of jurors was absolutely necessary?—Yes, which was carried out by the amending Act of last year.

2000. You then stated that you thought the qualification should not entirely depend on property, did you not?—Yes.

2001. Are you satisfied with the provisions of the amending Act?—Witb regard to the qualification, so far as I can understand the facts, I should now say that any attempt to increase the qualification would be so much to diminish the number of persons eligible as to make it unadvisable. I think the standard of qualification is high enough, having regard to the necessity of having so many jurors.

2002. You said last year that you thought a common juror's qualification should be 50*l.*?—Yes, but I was met by some statistics which satisfied me that jurors to a sufficient number were not to he obtained at that figure. I think, that an attempt to do that would very much defeat the purposes of the Act, by diminishing the number of jurors.

2003. What has been your experience of the results of the amending Act of last year?—I have taken some pains to ascertain the results, and I am in a situation to state that since the amending Act there have been tried on the several circuits in Ireland, in the Consolidated Nisi Prius Courts in Dublin, which sits every day during the whole term, and in the after sittings of the three courts, and in the Probate Court, 1,050 cases, which have been disposed of by juries. Now when a case goes to a jury, it must he disposed of either by the disagreement of the jury, or by the result of the verdict. The cases in which there have been disagreements are so very insignificant as not to he worth notice. The cases in which parties have heen dissatisfied with the findings of juries on any score of mistake, or any other matter impeaching the confidence of the parties, is not four per cent. on all the cases tried in which applications have been made to disturb the verdict as against evidence, and the cases in which applications have been successful have not been two per cent. The result has been wonderfully satisfactory.

Chairman—continued.

2004. What you have said I presume applies to the civil cases?—I am intimately acquainted with what goes on in the Court of Probate, and, on the whole, I think those 1,050 cases are a very fair representative. The statistics were given to me officially by the Clerks of the Rules in the different courts. Tbere has not been four per cent. of expressions of dissatisfaction with the findings of the juries in civil cases, and there have not been two per cent. in which the Court has agreed with the expression of dissatisfaction. So satisfactory is this, that I see no necessity for meddling with the Act at all?—I think that it is a very good Act, and it is working well.

2005. What is your opinion with regard to the criminal trials?—I must heg leave to preface what I bave to say by stating that I know that there has been considerable difference of opinion amoug eminent members of the Bar upon that subject, arising from their own personal experience. I will confine myself to what I know on the Leinster Circuit, in which, particularly in Tipperary, there is a class of cases well calculated to test the integrity of the jurors; I think they behave, on the whole, very well. I was myself called in specially to prosecute a person in some remarkable cases in Tipperary, in which the jurors were composed of men not all of a better class in life than the prisoner; in fact, many of them, as far as apparel and appearance went, were not up to the mark of the prisoners, who were, nevertheless, of the peasant class. The jury behaved remarkably well and with great fairness; and notwithstanding attempted alibis, the prisoners were convicted where scarcely anyone would have expected it. I think there will always be cases in which juries will differ, where political elements are involved, or questions of agrarian outrage. There will always he occasional disagreements of that kind, which cannot

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be obviated by any laws. If you had the most select men in the county I should expect the same result would exist irrespective of class; but on the whole, I think the working of the system in the Crown Court has been good on my circuit, and very good in the city and county of Dublin, as everyhody knows. When we talk of juries disagreeing or finding unreasonable verdicts, we must remember that difference of opinion is not confined to jurors; and if you examined the decisions of the judges themselves in matters of law, you would find they differ among themselves as much as jurors do. You will always have those differences of opinion in some degree.

2006. Have there been any cases involving political or class feeling that have come under your notice in criminal trials?—No, not since the Act of last Session.

2007. I understand you to say that you now think your estimate of a 50*l.* valuation as the qualification for common jurors was too high; does that apply also to your opinion as to a qualification of 100*l.* for special jurors?—I think 100*l.* is very fair; I am satisfied with the Schedule to the amended Act. I think it is very reasonable and quite sufficient to ensure the desired object. I would rather have had 50*l.* if we could have got the proper number, but they are not to be had, and that is a practical answer.

2008. You expressed last year the opinion that the revision of the lists should be conducted by the chairman at sessions with the aid of a staff of officers; do you adhere to that opinion?—I forget really what I suggested last year, but I would now suggest, if I then did not, and repeat, if I then did, that I would associate with the magistrates and the chairman the county inspector and sub-inspector of the constabulary. I think that they are men of such competence and such general respectability and integrity, and have such a general knowledge of the population, that they should be able to give valuable assistance to the chairman in revising the lists. But there should be this safeguard, that while under obligation upon oath not to make any unreasonable objection, they should not be bound to divulge any objection, which might put them in a very unpleasant position. In the course of things there are no men in the county so conversant with the general character and connections of that class of jurors as those officers. I would certainly be altogether against what is suggested by some of my friends, namely, the mere intervention of the magistrates in the revision of the jury list, which would not be received with general satisfaction in Ireland.

2009. You think that it would be objectionable that a previous preliminary revision should take place before the magistrates in petty sessions, and then that the list revised by them should be sent to the chairman for revision?—I think the chairman would not be in a situation to do anything effectually after that primary revision. I think the chairman would hesitate very much to alter the decisions of the magistrates, and I think they would be right on principle.

2010. Has your attention been called to the provisions of the English Bill now before Parliament?—Yes, in a general way.

2011. That Bill provides for the revision of the lists before the magistrates in the petty sessions district. Are you aware of that?—Yes. I should not like to see that in Ireland. I think the confidence of the people in the authorities in Ireland is not sufficiently advanced, yet I have no doubt it will improve every day; but they have not learnt, as they do in England, to look on the magistrates as their friends. I would rather leave it to a chairman, who is universally respected and trusted.

2012. Still the magistrates of the districts have local knowledge, which the chairman cannot have; is not that so?—Yes; but there is another political reason. I would not be inclined to have the magistrates, who are the gentlemen who take the informations, and who are more or less interested in the prosecution of the cases, at all connected with the preparation of the jury lists. At all events, not very openly or independently connected with the jury lists.

2013. You adhere to your opinion with regard to the jurors being summoned in alphabetical and dictionary order, do you?—I certainly do. The introduction of that plan caused general satisfaction in the country; it created an impression of impartiality, and the tendency is to diffuse this business over a wide area of people who were formerly not connected with the administration of the law at all. Now, it is a very politic thing to go as low as you can in social status consistently with having competent men. To invite them to assist in the administration of the law enhances their respectability in their own eyes, and it teaches them to see the law properly administered. I think nothing is more necessary in Ireland than to find the people themselves taking part in the active administration of the law; and nothing is more calculated to inspire general confidence, taking care always to have competent men.

2014. Now let me call your attention to the 62nd clause of the English Bill; will you kindly read that clause, coupled with the 49th clause, and state if you think it would answer in Ireland?—I think if it was, as I assume it would be, *bonâ fide* carried out, it would be very reasonable. I see no objection to it.

2015. Would you propose to leave any power with the judge to decide on the effect of a departure from the dictionary order?—No, certainly not. I have known most lamentable results to arise from the want of a voting power in the judge. The slightest departure is sufficient ground, in the opinion of the judges, and necessarily so, in point of law, to quash the panel. I would leave the judge to decide whether a departure from dictionary order had any effect on the integrity of the panel, so as to make it necessary to have it quashed. There have been most ridiculous cases of quashing the panel, where there was mere inadvertence. The judge could not be imposed upon if there was any design in the case; but I would leave him the power to say that it need not be quashed necessarily.

2016. You think that that would be looked upon with confidence by the public, do you?—Yes, no doubt; they have the utmost confidence in the integrity of the judicial bench of Ireland; they are above suspicion in all matters of that kind.

2017. You expressed an opinion last year when you were examined before the Committee, as to the advisability of adopting the postal service of summonses, and you said that it had been tried in Dublin; has it answered well?—Perfectly so; there

Chairman—continued.

there is a capital attendance, but I think it is not practicable for the country at large; I do not think letters would find the humbler class of jurors in remote districts.

2018. How would you have jurors summoned who were not summoned through the post?—I think, perhaps, the best course would be to adopt the machinery now in existence, for another purpose, that is to say, the petty sessions summons servers; to employ those men for the purpose of serving the summonses, imposing on them the obligation to return on oath the performance of their duties; whom they had served, when and how, and whom they had not served, and for what reason. If those returns were made to the clerk of assize for Crown purposes, and to the clerk of the peace for sessions purposes, the duty would be substantially performed.

2019. You think that they would not be open to any improper dealings with persons who did not wish to serve as jurors, do you?—Not more than others, and perhaps less than others, because they have something to lose under their appointment. Under the old system, the sheriffs bailiffs' men who did the servile part of the work, were necessarily men of a very humble class, and they were occasionally tampered with; you may not be able to prevent that entirely, but the petty session summons servers have some little stake in the administration of the law. Under the old system it was a common thing to give 2 *s.* 6 *d.* to a man not to serve a summons, and then a man could swear that he never had the summons; you will never be able to prevent that sort of thing altogether.

2020. Would you suggest that the law should provide for postal service in some parts of Ireland, and service by those officers in other parts?—I think that the postal service is scarcely applicable to any large area, except the county and city of Dublin; it would not be worth while to take in Cork or any other considerable city; I would leave that as it is.

2021. With regard to the power of setting aside by the Crown, what would you say with regard to that?—I would leave that as it is, without any Parliamentary interference. That is absolutely necessary for the due administration of the criminal law. If it were interfered with, the consequences might be very serious indeed.

2022. A suggestion has been made to the Committee that grand juries at courts of quarter sessions might be abolished; what have you to say on that subject?—I heard that thrown out. I am opposed to all changes, unless there be a real advantage to be gained, and some positive evil to be avoided. I never knew any harm from a grand jury, and people are better satisfied. I see no reason to interfere. I would let well alone.

2023. The reason suggested for abolishing grand juries is that it would release a certain number of persons for service on ordinary juries; have you considered that?—I think that is not a sufficient reason. The cases that are tried at quarter sessions are very serious, and men are sentenced to seven, and even 14 years' penal servitude at those sessions; almost every class of crime is tried there, and why the grand jury should be discontinued, unless you extend it to the assizes, I do not know. It would be rather a startling thing to abolish the grand jury at the assizes; they are a very ancient institution, and I would rather retain the grand jurors. I do not think that having 24 men more available for other juries would sufficiently counterbalance the doing away with the grand jury system. There is a very strong feeling in Ireland that many cases are tried in the court of quarter sessions which should be sent to the assizes; that the discretion is so very ample, that it would be better to reserve it to the superior judges in certain cases.

Chairman—continued.

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2024. As I understand you your evidence today is this: that having last year in your examination given your opinion as to the original Bill, you see no reason to change that opinion since the new Act was passed?—Certainly, I adhere to all I said last year. I would not shake the integrity of the Bill which has created public confidence in every direction, by diffusing the duties to be done and putting an end to all suspicion of partiality in the selection. Next to having the law really well administered is having the people to believe that it is well administered.

2025. Since the passing of the amended Act, have you had any reason to find fault with it by reason of any disagreements among juries of which you could complain as counsel?—No, not since the passing of the last amended Act, and nothing very flagrant before. I will take the liberty of saying that in the history of England, and in the history of Ireland, and in the history of every other country in which the jury system has obtained, there always have been disagreements, and you never will put an end to them in a certain class of political cases; perhaps it is not a very undesirable thing, after all, that there should be such disagreements. I would not be severe on juries that do not agree; it is nothing very startling, and it has arisen in England before now.

2026. There being few important trials in Ireland at which your assistance is not in request, can you inform the Committee whether there have been many disagreements at all?—Disagreements are really quite exceptional unless some political matters interfere. I do not care to advert to the Galway cases, and some other of those prosecutions, which were necessarily instituted, but where no person really expected anything but the result that took place.

2027. I understand you to say that with reference to the revision of the list, you disapprove of leaving it to the local magistrates at petty sessions?—Yes; they are very often insensible prosecutors, so to speak; they have a certain amount of interest in a case, when they have taken the informations.

2028. In any case, would you think it at all desirable that they should have the power given by the latter part of the 19th section in the English Bill; the power implied in the words, "or upon their own knowledge"?—No, I would not approve of that part of it in Ireland; that would beget want of confidence in the people.

2029. You are sure that would be very unpopular in Ireland?—Yes, it would be very unpopular in Ireland, and with myself even. In England the magistrates are all beloved and respected, and in the main the people look up to them as their friends and benefactors. The feeling

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ing to the contrary in Ireland is beginning to wear away, but we are not educated yet up to that point.

2030. But if it should be the feeling of the Committee that even the interposition of the magistrates would be required in the revision of the lists, you would rather see them sit with the chairman of quarter sessions in the discharge of their duty, and not in their own local courts?—Yes, certainly you would have the magistrates at petty sessions taking informations, and occasionally forming conclusions in their own minds, and then trying the cases. I am not imputing the slightest want of integrity; I only speak of them as men subject to human infirmity.

2031. I take it for granted that you know very little about the practice at the court of quarter sessions?—Not much.

2032. When you speak of the assistant county inspectors and sub-inspectors, you are aware, are you not, that there are so many quarter sessions held in the county of Cork that it would be quite impossible for the sub-inspectors to attend?—So far as they practically can I would have them do it.

2033. Do you not think that the local Crown prosecutor, who is in the habit of going round to every court of quarter sessions, would be a better party?—He would be an admirable assistant and could give great help.

2034. You would not have any person put off a jury except on examination, if necessary, on oath?—Just so; but we all know that there is a certain class of men who entertain extreme views and opinions on certain matters. If the sub-inspector or county inspector had *ex officio* knowledge that particular men were so mixed up with certain matters that they ought not to be on the trial of certain cases, I would not require them to divulge their knowledge in open court; I would throw that safeguard round them, but they should declare the fact on oath.

2035. I think you would not approve of the employment of the police to serve the summonses?—I would not employ the police at all, it would frighten the whole country side; it is not their duty.

2036. Giving the judge the power which you suggest, of deciding whether a panel not being summoned in dictionary order should be quashed, would get rid altogether of the objections that have been made to the dictionary order?—Decidedly.

2037. You would give him a decided discretion in the matter, would you?—Yes; I would have it argued before him, by counsel if desired, on each side, one for the accused and one for the Crown.

2038. I understand you to say that though you approve of raising the qualification to 50*l.*, yet that should depend on whether you had a sufficient supply of jurors?—Yes; it would depend on whether we had a sufficient supply of jurors. Under the old system, and under this system also, I have known cases in which the jury were men of comparatively high position and social standing, and the results arrived at were as unsatisfactory as they could have been if the jury had been the commonest peasants in the county; it is sometimes inevitable, and it does not depend on their rank in life.

2039. You would approve of the service of summonses through the petty sessions clerk in the district in which he acts as summons server?—Yes; corresponding to his own area of operation, at present.

2040. Do you not think that he would be so immediately under the influence and power of the magistrates, that there would be very little danger of his doing anything improper?—He would be less likely to do anything improper than anybody else, because he has something to lose; he would not be in that position if he was not a man of good character, and the exercise of his duty would be covered by his oath.

2041. It is suggested that it would be better to employ the process servers of the chairman's court; would you approve of that?—No, I would not approve of that.

2042. They have other duties to perform, have they not?—Yes; they have many other duties to perform, and I would confine them to the very important duties which they have now to perform.

2043. Would you approve of selecting the jury in criminal cases by ballot?—I see no objection to that, reserving the full power of setting aside.

2044. That power you would retain?—Yes, I would retain that power; that is absolutely necessary in Ireland, and I see no objection to it; I would do anything to satisfy the men in the dock that they are to get a fair trial; I have witnessed cases in which the jury have not had so much as a necktie, scarcely a shirt; the prisoner has been a little dressed up for the occasion, but nevertheless of the same rank in life; and I have observed the good moral effect of a verdict found by those men, who were really the peers of the prisoner; the old constitutional idea long ignored, and long not acted upon; the effect is most striking; a general sigh goes through the gallery when they find that peasant has convicted peasant; it has an immense effect, and an immense moral weight is attached to those verdicts.

2045. Have you gone circuit yourself as judge?—Yes.

2046. And you have tried some very serious cases, I suppose?—Yes.

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2047 With regard to the 1,050 cases which you spoke of as being disposed of by the juries in Ireland, I suppose they were tried all over the country?—Yes, all over the whole of the country.

2048. Have you ascertained whether that number of cases was greater or less, or about the same as the number of cases that had been tried in the previous year during the same time?—I have reason to think that there has been an increase of about 25 per cent. in most of the superior courts of Dublin within the last two years; it is steadily increasing.

2049. Of that 1,050 cases possibly the greater number were tried in Dublin?—I can give you the figures. On the Munster Circuit there were 150 cases; on the Connaught Circuit there were 60 cases; on the North-eastern Circuit there were 60 cases; on the North-western Circuit 60 cases; on the Home Circuit there were 80 cases; on the Leinster Circuit there were 60 cases; at the after-term sittings in Dublin at the three courts there were 350 cases; in the four consolidated Nisi Prius Courts there were 150 cases; and in the Probate Court there were 80 cases. Now I believe that is very close to the mark, they

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they are rather under than over, and that makes 1,050 cases. Now there have not been four per cent. objections taken on the score of the verdicts being unsatisfactory as against the facts, which is a strong testimony to the general acquiescence of the suitors in the verdicts. When those matters have been debated before the judges in two cases out of 100, the judges have not agreed to set aside the verdicts; they have, on the contrary, established the verdicts.

2050. It seems that 580 cases out of the 1,050 that were tried were disposed of in Dublin, and 350 of those were disposed of in the after sittings?—Yes; 150 were disposed of in the consolidated Nisi Prius courts and 80 in the Probate Court.

2051. That makes 580, does it not?—Yes, I think so.

2052. What is the process that is gone through if the verdict is set aside on account of its being contrary to the evidence?—The case is remitted to wherever it was tried before, to be retried, sometimes on the payment of costs by the parties who object at the beginning, and sometimes the costs are left open until the ultimate result is known. As a general rule, unless the court orders to the contrary, the costs abide the ultimate event. In some of the recent cases the court would not disturb the verdicts except on the terms of the party who was dissatisfied paying the costs of the previous investigation, which was almost equal to saying, "We think the verdict was well enough."

2053. But the case would be remitted back to be tried in the same place by a jury chosen in the same way, would it not?—That is the general rule; but the court may change the venue, and send it to another tribunal and place.

2054. But in any case it would be again tried by a jury?—Yes; but it must be a new jury.

2055. But in the case of a person who objected to a verdict that had been found, would it not be very likely that he would object to have his case re-tried by a process which would be very likely to produce the same results to him?—It is always open to him to apply to the court to change the venue to another county, but it is very rarely done; if there were perverse verdicts which the court thought very wrong, so that, on a second trial a second jury might make a similar mistake, the court might change the venue to another county.

2056. But in cases of first trial no doubt either party, where he had reasons to suspect that there would not be a fair trial in the county in which it was set down for hearing, would have a right also to apply to the court to change the venue?—Yes, certainly.

2057. So that it is *primâ facie* evidence that the first trial was held in a place where the result would be as favourable as possible?—Yes.

2058. The effect of the venue being changed for the second trial would be this: that it would be remitting the case to a place that would not be so well suited to the trial in the opinion of the defendant or the plaintiff as the place where the first trial was held?—Yes, with regard to their original opinion, but they might have changed their opinion.

2059. If such parties have reason to suspect that by the general constitution of the jury panels under the present law they have failed to obtain

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a just verdict, they would not be very likely to try the same plan again, would they?—Just so.

2060. That might have some bearing, might it not, on the small number of fresh applications for new trials?—I have given the results.

2061. With regard to criminal trials, you have attended at the Tipperary and Leinster circuits, have you not?—Yes.

2062. I find by the evidence which was given before this Committee a few days ago, by Mr. Bolton, where he was examined with reference to the assizes which were held after the passing of the amending Act of last year, that he says that in Roscrea and Clonmel, in the Summer Assizes of 1873, there was nothing very particular, and it was not a very heavy business; but at the Clonmel Spring Assizes in 1874, he mentions a very remarkable case in which he says that the judge, after the verdict was given, directed the sheriff not to allow one of those jurors to serve again during the assizes?—Yes, I know the circumstances; but it was not a case of that magnitude for the Crown to ask me to come and assist, as I was not present. That is a very exceptional case, and not at all sufficient to cast any blot on the whole system. I say the conduct of the juries is very good, and I think that if judges would take a little pains not to tell the juries some of the doubts that occur to themselves, things would go on better. The juries are very much operated upon by the alternative views thrown out by the judges, and they may come to conscientious conclusions very different from the conclusions which the judge thinks they should have come to. I am not sure whether the juries are not as good judges sometimes as the judges themselves.

2063. I suppose you would allow that Mr. Bolton is not a bad judge of the class of jurors that we now have?—I should say that he was one of the most competent men in the kingdom to offer an opinion, and one of the most intelligent.

2064. At the meeting of the Committee of the 18th of May last, at Question 1491, Mr. Bolton was asked, "Were the jury, on that occasion, from the same objectionable class"? And he replied, "Yes; there has been no change in the class of jurors since the amending Act"?—Just so, the qualification was not sufficiently high there.

2065. But it had been raised, had it not?—Yes, but it had not been raised high enough for Tipperary; yet if you raise it higher you will not get a jury at all.

2066. Then what, in you opinion, is the alternative?—The alternative is to be satisfied with the necessary imperfections of the human tribunals. You will never devise a system which will not leave those trifling anomalies; I take it that the very circumstance that that little case attracted so much attention, and not a very important case either, is strong evidence of the general satisfaction attending all the other cases at the assizes, which are very heavy; I think there were 40 criminal cases tried at Clonmel, and only one case out of so many shows any dissatisfaction.

2067. Then let me draw your attention to Question 1495, in which Mr. Bolton mentions two or three other cases of serious assault, in which the verdicts seemed to be very unsatisfactory. He was asked; "Have you found a general disposition among jurors to convict

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merely for common assaults, in place of serious assaults"? And he replied, "It is scarcely possible to obtain a conviction for anything but common assaults, no matter how clear the evidence may be, or how great the injury done to the prosecutor"; of course, you are aware that those serious assaults only fall short of murder by mere accident?—Yes, we generally find that they are what are called faction fights, and that is the only way in which I can account for the jury not taking a more serious view; they are family feuds, two or three years old, and you can never weed the jury panel under any system from the risk of having some of those men on the jury.

2068. Should you be satisfied to allow the unsatisfactory verdicts in those serious cases to continue, simply because the qualification cannot be sufficiently raised?—Not if I knew any means to avoid it.

2069. But you are very anxious to have competent jurors?—Yes.

2070. If you could get a competent class of jurors by any system from other parts of the county, surely that would be a way of getting out of the difficulty, would it not?—The present system has had a very insufficient trial. I think this course of perpetually tinkering Acts of Parliament before they have had a fair trial is not a very reasonable one, and with great respect I say, that I would be inclined to let the thing work for six or seven, or 10 years, and let the Crown counsel, or the Crown solicitor, and the clerk of the union, all honestly work together to make the Act effective; but to interfere perpetually with it, would be a very inconvenient course. I would rather have the inconveniences suggested by Mr. Bolton existing to the extent to which they have yet appeared, at all events, than revert to the old system of selection, or think of reverting to it. You may have the thirty-first cousin of a prisoner on the jury, and he may be a very honest man, and a very decent fellow, but he recollects that his grandfather was beaten by the prisoner's great-grandfather 100 years ago at some fair. It is a traditionary matter, and it is only enlarged education and the diffusion of good sense that will cure it. You cannot cure it by raising the jury qualification.

2071. You cannot cure it by raising the jury qualification, and certainly it cannot be cured by the alphabetical selection of the jury, can it?—Certainly not; but with regard to those faction cases, I myself prosecuted in a very bad faction case at Nenagh, and I took much trouble about it; the jury did not look any better than the prisoner as to social position, and I spoke for two hours, because I felt it necessary to do so, and notwithstanding what is called a forked *alibi*, the jury convicted the prisoners (a forked *alibi* is where each of the prisoners is alleged by some witnesses to have been from the spot); nevertheless, those common jurors convicted those men, and the verdict was received with enormous satisfaction in a crowded court. If the matter is not fully expatiated upon, or if the judge happens to take a special view of the matter, the jury have sometimes a loophole.

2072. With regard to the revision of the lists, I think you suggested that the constabulary, who you think ought to attend the chairman's court, need not be bound to divulge the objection which they make?—Yes, but I would require them to be bound by oath not to object to any man unless they believed he was an unfit man to serve on the jury at the coming assizes. It would be an unfair thing to put them in a difficulty; but they are men who know things, and I think that they might be relied upon for integrity. In fact, they are the only men I have heard of, in my character as Crown counsel, that no one would suspect, but they would not like to declare these things in open court. I will put this case: if persons involved in a Fenian conspiracy to the knowledge of the police were about to be tried at any given assizes, I would consider it objectionable that the persons who had been involved in such a conspiracy, to the knowledge of the police, should serve on the jury to try those offences. I would think it right that the police should communicate the fact on oath to the chairman and the magistrates, without being forced to divulge it in open court. It is raking up very unpleasant recollections and doing no good at all, and holding up those men to a certain amount to public obloquy.

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2073. Would not the power to set aside meet that case?—I would retain that, but I have known cases in which, notwithstanding the vigilance of the Crown solicitor and the sessional Crown solicitor, very objectionable men have crept in upon a jury. The Crown solicitor has very multifarious duties to perform, and there is a great deal of excitement at the assizes, as we all know very well. He is generally associated with assistants, but, nevertheless, the Crown solicitors do not know as much as the police authorities. The head constable would be the man; if they stated certain things in open court it might hurt a man's character very much without doing any corresponding good, and yet having one of those men on the jury might lead to a very disagreeable verdict. I would have all that covered by the sanction of the oath, but I would not have it made public.

Mr. *Bruen.*

2074. You have stated that you do not think that the magistrates should be entrusted with the revision of the lists?—Not alone at the petty sessions. I would associate them with the Chairman and with the police authorities.

2075. Your objection to the magistrates having the power to do that is owing to the want of confidence, is it?—Partially so; the magistrates who selected the jury would be assisting the other magistrates who committed the prisoner. Now I would ask you whether on your committing a man for trial, you are not more or less impressed with the man's guilt, and if so is it desirable that you should have anything to do with the selection of the jury who are to try the case. I think that people would have fair ground for their want of confidence in such a case; but I would deprive the magistrates of no territorial authority or respect; I would preserve their position in every particular.

2076. There is a very long distance between placing a man on the jury list, and the same man being on the jury to try the case, is there not?—No doubt; but the Irish peasant is very shrewd, and he debates it in his own mind, and he would rather

Mr. *Bruen*—continued.

rather that the magistrate who took the information, and who had already shown a decided opinion on the matter by his very demeanour should have nothing to do with the selection of the jury.

2077. Then let me point out to you that the Chairman is the judge who tries very many of those important cases, and yet you would give him the power of selecting the juries?—Yes, he is a stranger in the locality. He has a judicial character and in the present constitution of the Irish Bench, they are a body of men so utterly above suspicion that they cannot be put in the same category with the local gentlemen who come into contact every day with some of the people they may have to try.

2078. But you do not impute that the magistrates themselves would abuse their powers, do you?—No, I am very far from suggesting anything of the kind. I am convinced that they would act in the main with independence and integrity, but we must make allowance for the feeling of the public, who would be affected by their prejudices, and I think it is a duty that the magistrate should be glad to get rid of. I would give them a proper voice in the matter, and that is all.

2079. Now with regard to the service of summonses, you have, I think, admitted that though in some parts of the country it could be effected by post, in other parts of the country it could not?—Yes. I think, for instance, the county of Dublin is so spotted with towns, and there are so many conveniences for postal arrangements which are not applicable to remote rural districts, that it might answer very well. By the amending Act you extended the postal system to the county of Dublin, and it does very well in the city of the county, but in remote parts of the county a letter might lie a long time at the post office; you cannot go about without seeing the windows darkened with unclaimed letters.

2080. Would you adopt the suggestion that is made in the English Bill to give the judges power to make rules for the service of summonses, among other things; for instance, that in one county or in one district the service of the summons should be by post, and in another district, where it was not suitable to serve by post, the service might be by some officer appointed for that purpose?—I see no objection to that plan, when the power to make rules is given to the judges in much more serious matters. If I could introduce the postal system, I would introduce it in every part of the country. I would introduce something very like the notice of service of the Court of Chancery, where it is made under the official seal of the court, and the people cannot get out of the way.

Mr. *Verner*.

2081. You are, I gather, rather in favour of restricting the jurisdiction at the court of quarter sessions than of extending it?—I think there is a class of cases tried there now that would be better and more beneficially tried at the assizes; serious cases of felony, malicious assaults, and so on; for the sake of the example, the dignity of the assizes, and the dignity of the judge, and the attendance of the Crown counsel opening the matter to the jury, and if necessary arguing with the jury, I think it would promote the administration of justice to have such cases tried at the assizes rather than in a less public way at the court of quarter sessions But I have no fault to find with the learned chairmen; they are a most able body of men.

Mr. *Verner*—continued.

2082. But if you restricted the jurisdiction, would you still retain the grand jury?—I see no reason for abolishing the grand jury. The sole reason alleged is, that you would have 23 more men available for the petty sessions juries, which otherwise you would not have; but that is not a good reason in my opinion. I am constitutionally inclined to preserve all those old political safeguards. I see no evil to be remedied by striking off the grand jury as an institution

2083. With regard to exemptions from serving on juries, would you be inclined to reduce the number of persons exempt among the educated classes?—I have been thinking that over, and I think I would continue the exemptions, unless it should appear, in the course of time, that you were obliged to resort to summoning them. But I would be inclined to enlarge the area of the jurors, on the other hand, by not making it a simple property qualification I would include all graduates of universities, eldest sons of magistrates, young country gentlemen, and other educated men. But I think that the existing exemptions are reasonable in themselves; I would rather increase the area than abolish the exemptions. But on the whole, this is undoubted, in my opinion, that this class of men, who have lately got on juries, whatever little affectation there may be of not desiring to be there, are really proud of it; it is a feather in their cap when they go home. The interest which they take in it is a most healthy thing, in my opinion; and the more you introduce that humble blood into the jury system the more loyal you make the men. The lower you can go, provided you obtain competent men, the more you interest them in the administration of the law.

Mr. *Mulholland*.

2084. You conducted the prosecution for the Crown against Montgomery last year, did you not?—Yes.

2085. How many jurors were told to stand aside?—There was a great number very necessarily. There was a very curious incident connected with the trial which made that necessary.

2086. But, in fact, a very considerable number were made to stand aside?—The number was large, but there were reasons for it.

2087. But those reasons were addressed to their general intelligence, I believe, and not with reference to their sympathy; was not that so?—There was a feeling of sympathy also mixed up in it to my own knowledge.

2088. Certainly not in the larger proportion of those who were rejected, I think?—I think myself the great majority of the rejections were on the score of supposed incapacity to dispose of so serious a matter on circumstantial evidence.

2089. That is to say incapacity to understand?—Yes, you may say so. There was a long chain of circumstantial evidence which required investigation, and it gave a field for any amount of intellect.

2090. But was your general opinion not that, even under the amended Act, the general character of the jurors who were summoned was not one

Mr. *Armstrong.*

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Mr. *Mulholland*—continued.

one of sufficient intelligence?—On the third trial we had a very good jury. Those men that were summoned would do very well for ordinary cases. They were very good men for ordinary work.

2091. It was the case, was it not, that you were very much afraid that the jury list would be exhausted, and that you would have to come back on those that were set aside?—Yes, no doubt; but there was a special reason for it. When the Attorney General went down at first, a representation was made that there was a very strong feeling against Montgomery in that neighbourhood, and at the suggestion of some one or other, the gentlemen representing the Crown entered into an arrangement that no one should serve on the jury who lived within a radius of 10 miles; that took up half the county, and therefore there was a chance of running dry the jury list for that special reason; there would have been plenty otherwise. But we obtained a very good jury ultimately.

2092. It took a great deal of your eloquence to convince them, did it not?—It was, at all events, a right verdict, and the man confessed on the spot.

Chairman.

2093. Is there any other point which you wish to bring before the Committee?—I would only make this further observation, that I think it is very undesirable to disturb the public and professional mind by continual apprehension that something fresh is to be done in this matter.

Mr. *Downing.*

2094. I believe that the last trial of Montgomery was under the old system?—Yes.

2095. The jury disagreed in that case, did they not?—Yes.

2096. In the second trial there was a disagreement, was there not?—Yes.

2097. The third trial was under Lord O'Hagan's Act, was it not, and there was a conviction?—Yes.

Mr. *Bruen.*

2098. The second and third trials were under Lord O'Hagan's Act, were they not?—Yes; the third trial was in fact, under the amended Act.

Marquis of *Hartington.*

2099. Might I ask you whether you can tell the Committee of any judicial expression of opinion which has lately been given with regard to the character of juries?—Yes, I can. About 10 days ago I was instructed to apply for a change

Marquis of *Hartington*—continued.

of venue from the county to Dublin; I was instructed, and of course I was bound to act on those instructions, to put my argument entirely on the probability of not finding an intelligent and adequate jury for a case of such importance in the county; it was an action against a railway company for a serious loss of cattle; I was arguing in that way before the court, that it required a great deal of consideration, and that they would be more likely to get a first class jury in Dublin, than in the county: I was stopped by both judges, namely, Judge O'Brien, and the Lord Chief Justice, who had gone two different circuits; both bore testimony in the strongest way to the general capacity and intelligence of all the juries who had been before them on circuit last spring, and they said that they could not listen to it, particularly with regard to the home circuit, which the Lord Chief Justice had himself gone, and he spoke in very strong terms; all this appeared in the morning papers.

Mr. *Downing.*

2100. Those two judges were the Lord Chief Justice Whiteside and Mr. Justice O'Brien, I suppose?—Yes, that is a very strong testimony; I was arguing on the contrary hypothesis, and I was immediately snuffed out.

Mr. *Bruen.*

2101. What was the trial?—It was an action by a person of the name of Moore against the Lancashire and Yorkshire Railway Company; it was the loss of the "Columbos," which was wrecked off Holyhead; that was the first case in which it was held that carriers by water are not protected by unreasonable conditions.

2102. From what place did you move to change the venue?—I wanted to move the venue from the county of Kildare to Dublin.

2103. Was this a special jury case?—It would be. The court would not allow the trial to be removed to Dublin; they said, "You will get a perfectly good jury in the county."

2104. That would be in any case a special jury case, I suppose?—Yes, I think so.

Mr. *Downing.*

2105. That would not be so unless either party applied for it, would it?—Just so. I am quite sure that the judges never took that into consideration.

Marquis of *Hartington.*

2106. The judges' observations were general, I suppose?—Perfectly general; they intended them to be general.

Mr. Thomas Lefroy, Q.C., called in; and Examined.

Mr. *Lefroy,* Q.C.

Mr. *Bruen.*

2107. I think you are a Queen's Counsel?—Yes.

2108. You are Chairman of the Court of Quarter Sessions for the county of Kildare?—Yes.

2109. How long have you held that position?—Since 1858; that is, 16 years.

2110. Before you held that position, I believe that you were Crown prosecutor for the county of Roscommon?—I was Crown prosecutor for

Mr. *Bruen*—continued.

the county of Roscommon for eight years; and I hope we shall never again have an opportunity of so severely testing the merits of any Jury Act as we had during that time. We had no less than 166 prisoners for trial at one assizes for the county of Roscommon in 1848; of those, six were on charges of murder, 23 on charges of conspiracy to murder, and 66 for offences accompanied with the use of firearms. In 1849, the year before I resigned

Mr. *Bruen*—continued.

resigned my Crown prosecutorship, there were in Galway 423 prisoners for trial: 15 of those were for charges of murder or manslaughter, 24 for robbery or burglary, and 115 for sheep stealing. During the eight years that I was Crown prosecutor, I saw no reason to say that the jury system worked badly, on the Connaught Circuit at all events. However, it is right to state that Galway is the county of all Ireland where common juries were known to be the best (under the old system, I mean) for intelligence and independence. Of course, I need not say that when there were such serious offences, and such a number of them that the power to order jurors to stand aside had occasionally to be exercised, but I never saw any bad effect from the working of the system.

2111. You can perhaps tell the Committee whether the power of the Crown to order jurors to stand aside was more frequently exercised then than it is at present?—I have had no opportunity of judging of that, because I do not go circuit; it is only in my own court that I have had an opportunity of judging of the working of the new Act.

2112. But at all events the working of the old jury system, as you saw it at that time, did not appear to you to have forfeited the confidence of the public?—I think not, at least on the circuit I went; but in some places, take for instance Dublin, there were a number of jurors who almost always were found in the jury box, which was thought objectionable, and liable to suspicion, and for that reason I think any system extending the liability, and requiring that the duty should be equally distributed, as far as possible, among those liable and competent to serve would be a great improvement, because, undoubtedly, under the old system it was frequently found, especially in Dublin, that the same jurors always attended, and there were some who were well qualified who did not attend.

2113. Do you think that the new system under Lord O'Hagan's Act has in some degree proved a failure?—I think it has proved a great failure in respect of the intelligence and independence of the jurors who have been summoned under that Act; I have had instances in my own court where jurors have shown utter ignorance of the duty which they had to discharge.

Marquis of *Hartington*.

2114. That is in the county of Kildare?—Yes. There was one most extraordinary case which occurred under the Amended Act; it was a serious case; and the evidence was perfectly plain on behalf of the prosecution; I did not think that the jury would even retire; they asked, however, for permission to retire, and after about half an hour the foreman came out, and he said, "Your worship, there is one of our body that says he would not find the man guilty under any circumstances." I said, I could not receive such a statement as that, without having his brother jurors in court. They came out, and the juror did certainly say, "I could not find the prisoner guilty your worship; I might be guilty of the same to-morrow myself." I said I feared that I was neglecting my duty in not transferring him from the jury-box to the dock, having taken a solemn oath that he would give a verdict according to the evidence; and now, in the face of his

Marquis of *Hartington*—continued.

brother jurors and the public, saying that he would not find any prisoner guilty. Of course I had to discharge the jury, and when I was about to summon another jury, the prisoner immediately pleaded guilty.

2115. Now you have no reason to suppose, I presume, that that juryman was different from the ordinary class of jurymen that come into your court with regard to respectability, and so on?—I must say that the class of jurymen is very inferior to what it used to be; I have had some very bad cases under the new Act, showing great want of intelligence.

2116. So the instance which you have mentioned was not an exceptional instance, was it?—I would not say that; that was a very gross case indeed; but I have no hesitation in saying that the class of jurors who have attended my court since Lord O'Hagan's Act was passed, are very inferior in point of intelligence. There was another case that showed their inferiority in point of independence; the evidence was perfectly clear, and there had been actually a compromise offered by the party before coming into court, and the only question was the amount of damages; it was a case of malicious wounding; the jury found a verdict of not guilty; and afterwards an action was brought and damages were recovered, thus showing that the verdict was a very bad one.

2117. Do you think it is likely that a system which from certain defects brings into the box jurors of that description is likely to command public confidence?—No, I think not at all, and I think that it is a grievous hardship on the jurors themselves; some men come who are so poor that it is a very great hardship on them to remain even for a night, and they have to walk 20 miles in some instances.

2118. Have you any suggestions to make to the Committee for altering the provisions of the Act of Parliament in these respects in which it appears to you to be a failure?—I think that the Act making the sheriff, as he is now, a mere machine is very vicious in principle; I think the sheriff should have a certain discretion; I do not mean to say he should have an unlimited discretion, but a discretion with safeguards to prevent its being abused; I am sure it is essential for the due administration of justice, in Ireland especially, that the sheriff should not be bound to pursue the system that the present Act of Parliament suggests, of taking the jurors alphabetically from the jurors' book for his panel; I would preserve the alphabetical arrangement in the composition of the jury book; but it occurred to me that the best way would be to divide the jurors' book into hundreds; and I would then require the sheriff, as far as it was practicable with due regard to the competency of the men, to take an equal number from each of those hundreds until he had exhausted the list; I would in every instance impose on him the duty to return competent men. There seems to be a popular mistake in supposing that giving the sheriff what is called a discretion is of modern introduction. It is, in fact, an old common law duty imposed on the sheriff, only to return competent men as jurors on his panel There is a statute of Edward the First, recognising this principle by enacting that in all cases the most sufficient and least suspicious men should be returned on all juries, that is to say, in our modern

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language the most competent men. Hawkins, one of the ablest writers on the criminal law, says that that was so consonant to common right and natural justice, that it was always taken as a mere affirmance of the common law, so that any officer who returned a juror contrary to that, might be prosecuted at the suit of the king. It is also to be remembered that in Ireland the oath that every sub-sheriff takes to the present day, is the oath prescribed by the statute of 12 Geo. 1, chap. 4, in which he swears that he will make due panels of persons able and sufficient, and not suspected or procured. Now, according to the present system, the sheriff would be bound to return a man in alphabetical arrangement, though he might suspect, or even know, that he was connected with a Fenian society, or in any other way utterly unfit to serve as a juror; I think the discretion of the sheriff should undoubtedly be left to him, while I would secure the fair distribution of the duty amongst those liable, by requiring him to take an equal number of names from each 100, so far as he could do so, having regard to their competency, until he had gone through the book. I have taken the liberty of drawing out a form of precept, which is very much the same as that which was suggested in Sir John Young's Bill of 1854: By it the sheriff would be required "to summon for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes or general sessions of the peace, or other sittings, a sufficient number of competent jurors named in the jurors' book, selecting, as far as may be practicable, having regard to their competency, an equal number of names from each division of 100 in the said book, and omitting, so far as may be practicable as aforesaid, the names of such jurors as shall have been summoned and attended at any previous assizes or general sessions of the peace within the same year." I think that would effect the all important object of giving us competent jurors, and at the same time it would secure the due distribution of the service among those that are liable to it. By such a precept as this, if a juror happened to get on the book at the beginning of the year, and that the sheriff was quite aware that afterwards he had either joined an illegal society or become unfit for any other reason, he would not be bound, contrary to his oath, to summon such a man.

2119. Would you propose to make any addition to the qualification which now exists in the Jury Act?—Yes, certainly. I do not think the mere rating qualification will ever give us the men of most intelligence and independence. It occurred to me that there should be added to the present rating qualification all 50*l.* freeholders, 50*l.* rentchargers, 20*l.* freeholders, and 20*l.* rentchargers. Those are all recognised as persons having the elective franchise at present, and to be found on the list of voters for each county; and, generally speaking, they are in a more independent position and more intelligent than those who are qualified by rating. For instance, 30*l.* is the rating qualification in Kildare, and in several other counties for common jurors. But a man may be rated at 30*l.* when he may be paying a rackrent; he may be a man of no intelligence whatever, and of no education whatever, living in a mud cabin, and wholly incompetent, from fear of the people, to act as a juror in any important case. I would also add, sons of peers, baronets, knights, justices of the peace, eldest sons of baronets, officers of the army or the navy not on active service, and graduates in universities. And it appears to me that it is a very unnecessary distinction which is now made between jurors of those cities which are counties in themselves and those of the contiguous counties. In that way the services of the best jurors and the jurors to whom it would be the least inconvenience to attend, are often lost. I would make jurors of counties of cities attend on county juries, and I would, *vice versâ*, make the county jurors attend on juries for counties of cities. In that way you would have a larger number in the jurors' book, and you would get a better class of men. I also think that in rural districts, if you could add a household qualification, you would ensure a very much better class of men, even if the household qualification was low.

Marquis of *Hartington*—continued.

2120. Do you mean taking it as compound?—Yes, compound with the land; I have no hesitation in saying that a man might be rated at 30*l.*, paying a rackrent, and in a miserable condition of life, and a wholly uneducated man; but if you take a man with a good house over his head, you are more likely to get an intelligent man; I think a household qualification of 4*l.* or 5*l.*, with a qualification of 30*l.* for the land, would be an advantage.

2121. Have you any other suggestions to make to the Committee, with regard to the qualification of jurymen?—No.

2122. Do you think that any additional disqualifications should be added to those which are now in existence?—Yes; I do not think that even the Amended Act has exempted the publicans, and I have seen the greatest evil from allowing them to serve on common juries; I think that all publicans should be exempted; I think, also, the Act of Parliament is defective in the way it mentions disqualifications from crime; I think the words are, "No alien, nor any man who hath been, or shall be attainted or convicted of any treason or felony, or of any crime that is infamous, unless he shall obtain a free pardon, nor any man who is under outlawry by virtue of any criminal process, is, or shall be qualified to serve on juries, inquests, or inquiries in any court, or on any occasion whatever." Now that is very obscure; in the old state of the law it was well understood that a crime that subjected a man to an infamous punishment, such as the pillory, or the tumbril, or the stocks, was an infamous crime; but there is no such thing now, and I would substitute for these words "convicted of any treason or felony, or any other crime which, in the judgment of the chairman should make him unfit to serve as a juror"; for instance, perjury or forgery are crimes that would render a man in some instances very unsafe as a juror to give a verdict on oath, according to the evidence. But I think it would be far better to leave it to the discretion of the chairman; there could, I suppose, be no mischief in doing so.

2123. Now with regard to exemptions; have you any wish to alter the exemption as to age, which is now 60?—Yes; I think we have lost in Kildare some of the best jurors from that exemption. At present, when the lists are under revision, the clerk of the union has entered "objected." I ask the reason why, and he says, "He is above 60 years of age." I would clearly make the age 70 as the limit for exemption, and I then

Marquis of *Hartington*—continued.

I then would give it as a right if claimed by the party, but I would let it be in the chairman's discretion, unless claimed by him. There are jurors to my own knowledge past 60 years of age who have no objection to come and serve as grand jurors, or as petty jurors, and would not care to claim exemption, and I should be very glad to have them. If a man claims as a right to be exempted at the age of 70, I would give it to him; I think we should secure a far better attendance if the present system of fines was abandoned, and instead of the chairman or judge having to exercise his discretion in each case, I would have the officer to impose a fine, and enter the fine against any juror who was called and had not attended, and I would leave the juror to get the fine remitted on affidavit if he could show a fair excuse for non-attendance. There is a great strain on the jury list at present from the great number of men who are summoned, and who have to attend merely because it is known perfectly well that men will take their chance of getting off, and not come; but if they were fined, as a matter of course it would save much trouble.

2124. Have you had occasion yourself to fine many jurors for non-attendance?—Yes; I generally act very strictly in that matter. If a man does not attend, after the session is over I desire a fine to be entered, and then at the following session he comes forward to state his ground of excuse. I have the case regularly heard, but I believe that is not done generally.

2125. Have you actually levied a good many fines in that way?—Yes; I could not say the number, but I have levied fines: except there is a fair excuse made, I desire the fine to be levied.

2126. Do you think that the revision of the lists should be done by the magistrates in the first instance at a special petty sessions?—I would have the magistrates revise the lists, but I would have a special sessions for it; not petty sessions. I feel the importance of revising the lists so much, that I would require the magistrates to have a special session for it, and not mix it up at all with other business. The resident magistrate should be obliged to attend. I would have the clerk of the peace remit the lists sent to him by the clerks of the union, and to send a copy to every petty sessions district. I would then require notice to be served on any man whose name was put on for the first time, and I would require the constable of each station in the petty sessions district, and either the inspector, or sub-inspector, to attend to give information. In that way you would obtain the benefit of the local knowledge that the magistrates have, and which the chairman cannot have. I would not, however, suggest this as the final court; I would give an appeal to the chairman. I think that every man whose name was struck off, or any new man who was inserted, but had not been originally put on by the clerk of the union, should have a star put opposite his name, and notice should be given to him that the case would be finally decided at the chairman's court. That would only be carrying out in a better way the system which was adopted under the 3rd & 4th of Will. 4. In that case if a man was struck off by the magistrates, there was an adjournment for him to show cause. Now, instead of having that adjournment to a further session of magistrates, I would have that adjournment to the

Marquis of *Hartington*—continued.

chairman's court. I think that would give great confidence, and that the final revisions should be by the chairman, giving at the same time the benefit of the local knowledge of the magistrates, by requiring them to revise the list in the first instance.

2127. You, as chairman, would not hesitate in re-placing a man on the list if it was shown to you that he had been improperly struck off by the magistrates?—Certainly not.

2128. You do not, at all events, adopt the suggestion of the last witness, that the revising barrister would feel at all indisposed to reverse a decision of the magistrates?—The chairman has constantly to review the decisions of magistrates.

2129. In that case, supposing a man had been struck off who ought to be on, and applied to be re-placed, substantial justice would be done to him, would it not?—Certainly; it is to ensure more confidence in the lists, that I say the decision of the magistrates should not be final.

2130. Then with regard to the juries for your own court, would you propose to take them from the district near the town at which you sit?—Although mine is a small county, I know there are some instances in which jurors have to come 20 miles who can very badly afford it. I see no objection therefore to letting the sheriff summon those that are within an area of say ten miles round the town. But that would be met by the form of precept that I have suggested, by giving the sheriff a discretion.

2131. You think it is certainly necessary, in the interest of jurors, in order to lighten the burden upon them as much as possible, to let them be taken from districts where it would be convenient, at the time, for them to serve?—I do; there are instances in counties where that might have had a bad effect, of course, if the sheriff was bound to do so. Take for example the cases of faction fights and outrages of that kind; in those cases it would be very unwise to bind the sheriff to take the jury from that district; but in this form of precept you admit of his exercising a discretion, and the competency of the juror for the case is what should be his guide.

2132. With regard to the power of peremptory challenge which now exists in all cases of felonies, is it only in capital cases that you would be disposed to give that challenge, or would you give it in all felonies?—I would only give the right of peremptory challenges in capital cases. As it was originally given under our law it was a privilege given *in favorem vitæ*, and formerly in all cases of felony, death followed as a matter of course, so that if a statute made an offence a felony, though it gave no punishment expressly, death followed as a matter of course; but now that very few felonies are subject to capital punishment, it seems absurd to make the class of crime the ground of the privilege. In a case of misdemeanour the court has the power of sentencing the prisoner to penal servitude for seven or ten years, or just as much punishment as he would give for many felonies, yet in the one case the man has 20 peremptory challenges, and in the other case he has none. The right is sadly abused in many cases; it is made use of to get rid of the best men off the panel. I would certainly not let that privilege remain except in capital cases. I may mention that there is a curious mistake in the present Act of Parliament,

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ment, at least it appears to me to be a mistake in the 24th section because it takes away the right of private prosecutors to order jurors to stand by, and yet it gives no right of peremptory challenge, so that, in a case of that kind, the prisoner would have a right to challenge 20 jurymen peremptorily, while the prosecutor would have no right at all to order jurors to stand aside or challenge, except on showing cause, of course, which is a very difficult task to put on any man. I therefore think that you should either give the prosecutor something to compensate him for taking away the right to order jurors to stand aside in the way of peremptory challenge, or that it should be left as it used to be.

2133. Have you any other suggestions to make to the Committee with reference to changes in the Act?—I was looking over the English Bill, and I think that there would be a saving of the jury list by adopting the clause in the English Jury Bill, allowing seven to be the number of jurymen in civil cases, with a right to either party to call 12; but I would not like to extend that to criminal cases.

2134. That clause having been rejected by the House of Commons, will you let me now pass on to the question of qualification in the schedule of the amended Act; will you be kind enough to read the qualification for special jurors in the county of Kildare?—"A net annual value of 20*l.* or upwards in respect of lands, tenements, or hereditaments within any of the said counties, or a net annual value of 100*l.* or upwards in respect of lands, tenements, or hereditaments appearing on the rate-book of any union to be situate in any city, town, or village within any of the said counties."

2135. Now, is the qualification for special jurors higher or lower than that in the county of Dublin?—It is lower in Dublin; it is a net annual value of 50*l.* in Dublin, and 100*l.* in Kildare.

2136. As far as the qualification goes, a change of venue from Kildare to Dublin would bring a case under the jurisdiction of a lower qualification, would it not?—Yes, certainly, if it was a special jury case. In Kildare the amended Act reduced considerably the number of jurors. I think under Lord O'Hagan's first Act we had 1,557 common jurors, and they are now reduced to 1,133. The special jurors' list was 408 under the first Act, and it was reduced to 234. We might do with fewer jurymen in Kildare, but there is a great deal of criminal business there arising out of the camp. I had 39 bills at the court of quarter sessions immediately after the passing of the amended Act; and I had 24 bills in January last.

2137. Would you be in favour of abolishing the grand jury in your own court?—No, I would not; I like very much the feeling of our law, that a man shall not be put on his trial without, in the first instance, a *primâ facie* case being made out against him by such a tribunal as that; he is not exposed to a public trial in that case; it is a tribunal which acts in private, and I think it is very important that no man should be forced to defend himself in a public court, on a charge of crime without having, at all events, a *primâ facie* case in the first instance established to prove his guilt. I ought, perhaps, to add a word as to the discretion which I am proposing to give to the

Marquis of *Hartington*—continued.

sheriff; I know that some have said that there was a suspicion of partiality, and that there is a danger in restoring that discretion. Now it appears to me that a statement which is already before the Committee, is a very powerful answer to anything of that kind; I mean the statement made by the sub-sheriffs from 28 counties in Ireland, giving the number of challenges to the array in different counties during the time the present sub-sheriffs have held office. I find that in 20 counties there was not a single challenge; in six counties there was only one; in two counties there were only two, three of those cases have been since the late Act, on the ground that the panel was not alphabetically arranged; so that, in fact, you may say the number of challenges to the array is infinitesimally small, showing that there was no suspicion of partiality, and during the eight years for which I prosecuted, I do not think we ever had an instance of a challenge to the array.

Mr. *Verner*.

2138. One of those cases was the case of Rea, I think?—I believe so.

Marquis of *Hartington*.

2139. With regard to that case of the juror who stated in open court that he would not convict the prisoner under any circumstances, was there anything peculiar about his appearance?—I did not perceive that there was.

2140. You do not recollect whether his appearance was that of a respectable man, or otherwise?—I do not think that there was a single man on the jury that I would say had the appearance of a respectable man.

2141. But how would the selection by the sheriff have prevented the attendance of that man on the jury?—We should not have had that class of jurors at all if the sheriff had had that power.

2142. Then without resorting to selection, is it not possible that by raising the class of jurors, you might avoid the attendance of such men on the jury?—Yes, I think you might if the qualification was sufficiently raised to prevent it, but if you raise the qualification materially, your list of jurors will be too small. I only mentioned the case referred to as showing the utter ignorance of the men with regard to the duty which they have to discharge.

2143. What you desire to see, more even than a return to the system of selection by the sheriff, is a raising of the qualification, which would prevent this incompetent class being on the jury book?—No, I am more anxious to give the sheriff a power of selection, guarded against abuse as I suggested by requiring him to go through the list, not summoning some continually while others were never summoned; the sheriff must have the power to say, "I will not summon A, B, or C; I know him to be a man unfit to serve," if you wish to have proper juries. Let the revision be ever so careful, a man will sometimes get on the list whom the sheriff might know as utterly unfit in important cases to serve on the jury, or he might become so after being put on the book.

2144. You stated, I think, that before the passing of Lord O'Hagan's Act you considered that the common law laid an obligation on the sheriff that

Marquis of *Hartington*—continued.

that he should provide panels of competent jurors?—It is expressly provided under the Act of Parliament, which I mentioned, and the oath that the sub-sheriff takes to this day, provides that he should find "able and sufficient, and not suspected or procured men."

2145. But the duty was thrown on the sheriff, and not on the sub-sheriff, was it not?—No, it is the sub-sheriff's oath, under the 12th of Geo. 1. c. 4.

2146. But the sub-sheriff was acting immediately under the orders of the sheriff, I suppose?—No, I think the sub-sheriff in the case of petit juries always makes out the panel.

2147. Practically he did, I believe, but the sheriff was the responsible party, was he not?—I can hardly say so, when a man takes the oath I have referred to, he is responsible.

2148. I think you referred to some very old Act of Parliament; the Act of Edward the First, was it not; and you also referred to some authority on the law laid down in that Act; did you state how that obligation was cast on the sheriff to furnish a competent panel?—What Mr. Hawkins says is, that the Act enacted that the most sufficient and least suspected persons shall be returned on all juries, and that that is so consonant to common right and natural justice, that it must be taken to be in affirmance of the common law; and if any officer be wilfully guilty of an offence against it in returning a jury, he shall be punishable at the suit of the king.

2149. Do I understand you to say that the law was, that the requirement was cast on the sub-sheriff, and that all that the sheriff had to do with the matter was the appointment of the sub-sheriff; is that so?—I am not at present aware whether the high sheriff takes any oath on the subject, but I am aware that the sub-sheriff does, for I inquired in the Exchequer Office about it, and I saw a copy of the oath. Several Acts have been passed regulating to a certain extent the duty of the sheriff in making out the jurors' list; and the panel is taken, subject to challenge if anyone be put upon it who was not qualified according to law, but the oath as to returning men "able and sufficient, and not suspected or procured" is still binding on the sheriff.

2150. But looking to the oath that was taken by the sub-sheriff, you would not say that the high sheriff was guilty of any neglect of duty in leaving, as I believe he always did, the whole duty in connection with the preparation of the jury panel to the sub-sheriff, would you?—If he has to take an oath as the sub-sheriff has, I would say that he was guilty of very great neglect of duty.

2151. But, practically, I believe it was left to the sub-sheriff?—Perhaps so; I cannot say.

2152. Do you think that the sub-sheriff is the competent person to prepare the panel?—I do; I must say that never in my own experience did I hear, nor did I even hear in the profession, of there being any case established of partiality against the sub-sheriff; perhaps I am wrong to say not any case, for every human system is subject to imperfection; but I believe that no other system could be suggested in which there would be so little liability to abuse. I cannot imagine any other officer in whose hands the discretion would be so little subject to abuse.

2153. Do you think the sub-sheriff is in a

Marquis of *Hartington*—continued.

position which will make it improbable that he will be suspected of partiality. Is he in such a position as will ensure general confidence in the impartiality of his selection?—I do not know of any other officer who would be likely to secure confidence. The sub-sheriff generally acts under many different sheriffs differing in political and religious creeds; you have the same sub-sheriff acting in the county for many years, and he is likely to be a man who must have secured confidence from his good conduct, and the very fact of there being no challenge to the array as a matter of practice, is very strong proof that they are not really suspected of partiality.

2154. Do you think that if partiality had been suspected, it would be an easy thing to prove that partiality?—I am quite sure that if there were any fair reason to say that the panel was arrayed from partiality, it would have been tried much oftener than it has been tried.

2155. Your experience has been chiefly in the county of Roscommon as Crown prosecutor, and on the Connaught circuit, has it not?—Yes.

2156. And in the county of Kildare as chairman?—Yes.

2157. You have not had a great deal, probably, to say to party cases?—No.

2158. Do you not think that in those parts of Ireland where party cases were very frequent, a system of selection by almost any officer was calculated to produce want of confidence in the impartiality of the juries?—I think an unlimited right of selection would; and for that reason I would guard it in the way I have suggested, by requiring the sheriff to divide the jury list into portions of 100 each, and requiring him to go through those hundreds, taking an equal number of each, and exhausting the book in that way, always having regard to the competency of the men summoned.

2159. But you do not require the sheriff absolutely to exhaust the book, do you?—If he knew that any man or men were, either after they had got on the list, rendered incompetent, or that they were incompetent to his own knowledge for any reason, I would not have him summon those men; if he were to omit to summon men from wrong motive or without any ground, the array would be subject to challenge, and you would have a perfect safeguard in that way.

2160. You have mentioned several new qualifications which you would recommend to be added to those mentioned in the Act of Parliament; how would you get at the men qualified under those new headings?—In the county Kildare I sent the other day for the list of those entitled to the franchise, although not in occupation. I desired the officer to send me up the return, and I found that it would add 228 names to the list of jurors, taking merely the freeholders, the leaseholders, and the rentchargers, without reckoning the sons of peers, baronets, and so on.

2161. Where did you find out that that would be the result?—From the list of Parliamentary voters in the county.

2162. There might be others besides those, I suppose?—To be sure there might.

2163. On what officer would you impose the duty of finding these people out?—The clerk of the union knows them, generally speaking.

2164. But still he has no official record of them to consult, as he has the rate-book; he gets the

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jury list at the present time exclusively from the rate-book, does he not?—Yes.

2165. The rate-book is an official record, is it not?—Yes; and so is the voters' book kept in the clerk of the peace's office.

2166. But if you applied those qualifications, and made it incumbent on the officer to place on the book every person so qualified, he must institute a series of inquiries of his own, must he not?—No, he gets the voters' book from the clerk of the peace's office.

2167. But those qualified persons might not be all on the list of voters, might they?—Almost always; they are very glad to claim their right of franchise. In the small county of Kildare I have stated that it would add 228 names to the list of jurors. These persons are very well known by the clerks of the peace, or clerks of the unions, and no injustice could be done, because I would have notice served on every man before his name was put on or struck off.

2168. The new qualifications which you would suggest are the 50*l.* freeholders, the 50*l.* rent-chargers, the 20*l.* freeholders, and the 20*l.* rent-chargers?—Yes; I take them from the Acts of Parliament conferring these rights of franchise, because they are rights not connected with occupancy; there are leaseholders for terms of 60 years, and others entitled to the franchise if in occupation; but wherever the occupancy is required to give a right of voting, there it may be presumed that we have them on the jurors' book under the rating qualification. Then I would add sons of peers, baronets, knights, magistrates, eldest sons of baronets, officers of the army and navy not on actual service, and graduates in the universities; and I think you would also get a very valuable accession by requiring the jurors of counties of cities to act.

2169. But the clerk of the peace has no record to consult for all those last cases, has he?—No, he has not.

2170. Then how is he to discover them?—The clerks of the union and rate collectors know who are resident in the district. There are many instances where those men are resident in the county all the year through, and they are very glad to get off at present, but they would be a most valuable acquisition to the list.

2171. But still, if they are to be put on the jurors' book, it must be some one's duty to put them there, must it not?—I would have the clerks of unions put them on like others, and when the magistrates are sitting to revise the lists, if any man had been left out who was resident, such as sons of peers, baronets, or graduates, and so on, it would be their duty to put them on.

Mr. *Bruen.*

2172. Would it not be easy for the poor-rate collectors to put those names down, they being perfectly conversant with their own districts?—The poor-rate collectors are, in fact, at the present time the parties to make out the lists for the clerks of unions. The clerks of unions can, under Act of Parliament, call on poor-rate collectors to make out, and they do make out, in fact, the lists.

Mr. *Downing.*

2173. You spoke of the year 1849; that was immediately after the famine, was it not?—Yes, 1848–49.

Mr. *Downing*—continued.

2174. In Ireland we all know that at the court of quarter sessions that nearly the whole of the business at that time consisted of cases of larceny?—Yes, and a great deal at the assizes also.

2175. But that was immediately during the prevalence of the famine in Ireland, was it not?—Yes.

2176. Now, you gave a case of a very great failure of justice, and you only gave one; can you give the Committee any other case from your recollection?—Yes, I had four cases at the same sessions that I entered on my note book as very bad verdicts.

2177. Do you mean bad verdicts on the evidence?—Yes, there was no evidence at all for the defence; the evidence was perfectly clear.

2178. That is to say, clear to your own mind, but not to the jury?—Yes.

2179. You know very well, do you not, that juries very often differ from the chairman and from the judges?—Sometimes they do, but I am bound to say that in the county Kildare that is not very often the case.

2180. But if the jury did not sometimes differ from the chairman and the judge, the jury might almost as well be dispensed with, might it not? When the facts are plain, intelligent men will generally draw the same conclusion, and, it is the judge's duty if there is a doubt on the evidence, to put it to the jury, and to tell them that it is their province to judge of the evidence.

2181. Did you make any inquiry about the juror who said he would not convict in any case, because he might do the same thing himself another day?—No.

2182. Nor in any of the other cases?—No.

2183. You neither inquired from the sheriff nor the clerk of the peace, with regard to the habits of that man, whether he was really a sane man or not?—I had no reason to doubt his sanity. The case took up a long time, and he appeared to be as attentive as the other jurors.

2184. You have not traced him since, I suppose?—No; there was another case as serious at the same sessions; it was a case of malicious wounding, where there was a clear ground for a verdict of guilty, and where there had actually been an offer of compromise before the trial, and in an action brought afterwards, damages were recovered; but the jury found a verdict of not guilty.

2185. Would you not say that in all times and places we might find cases of that kind?—Perhaps so.

2186. Now, with regard to the character of the jurors before the passing of Lord O'Hagan's Act, do you think that you had juries really constituted according to the law at that time?—I could not say that they were constituted strictly according to the law at that time, but I know in practice the old system gave us good juries, and it worked better than the present.

2187. But if you had not one jury in a dozen constituted according to the law, there was a necessity for altering the law, was there not?—Yes, certainly; I would not say that there was no necessity for altering the law, on the contrary, I highly approve of extending the area of liability to

Marquis of *Hartington*—continued.

to serve on juries, and defining with certainty the class that are to serve.

2188. As I understand you, you do not disapprove of bringing into the box a more general class of men to try the cases, which come before you?—Certainly not. If the qualification is sufficiently high to give you a fair protection with respect to having educated and intelligent men, it is a very great improvement.

2189. As I understand you, your objection to the alphabetical order is because of the dictionary order?—I do not say that I have an objection to the dictionary order. I say that the alphabetical order is good for the arrangement of the lists, but I object to requiring the sheriff to take his panel in alphabetical order.

Marquis of *Hartington*.

2190. If you do not retain the alphabetical selection of the panel, what is the use of having the jurors' book alphabetically arranged at all?—It is a very convenient thing; but what I object to is requiring the sheriff to take them in that way, without regard to either their competency or the fact of their being men fitted for the particular cases. It does away altogether with the discretion which he is bound to exercise in summoning men sufficient or competent for the cases they may have to try.

Mr. *Downing*.

2191. Do I understand you to say that after the revision, the court, having gone thoroughly through the revision of that list, and its being returned as the jury list to the sheriff, you would, after that, give the sheriff the power of selection by leaving out a man if it had come to his knowledge that he was unfit, from one cause or another, to serve on the jury?—Yes, certainly.

2192. How is the sheriff to obtain that knowledge?—The sub-sheriff is just the man to have accurate knowledge; he is more likely than any other man to know.

2193. Then why not give him the whole discretion at once, in the arrangement of the list altogether?—Because an unlimited discretion is more liable to abuse.

2194. But do you not give him the power afterwards, when you give him the right to eliminate any man that he considers unfit; is not that giving him the power of striking whom he likes off the book?—No; not whom he likes, but whom he knows to be incompetent or unfit, and he is subjected, of course, to a challenge if he does it from improper motives.

2195. Admitting that power of challenge, still would he not have the power which he had before the passing of Lord O'Hagan's Act, if you give him the power in his office after the jurors' book has been returned to him, revised by the magistrates at the court of quarter sessions to strike off any man?—The sheriff would have the power to strike a man off, or rather not to summon if he believed him to be incompetent.

2196. Is not that the power which he had before the passing of Lord O'Hagan's Act?—No; certainly not, for this reason; you have a certain number of men put according to the provisions of this Act on the jurors' book, and you limit his discretion by requiring him as a general rule to summon those men in a particular way, taking an

Mr. *Downing*—continued.

equal number from each hundred; but if he knows a man to be incompetent, you do not impose on him the duty of summoning that man.

2197. But is not that giving him the power to leave out any man he likes?—No, not any man he likes, but any man he knows to be unfit.

2198. Does not that come to the same thing?—No.

2199. Did I not understand you to say the sheriff was to summon the best men?—On the contrary, the very form of precept which I have suggested modifies the words in Sir John Young's Bill for that very reason. My precept says, "a sufficient number of competent jurors named in the jurors' book," (not, "the most competent") "selecting so far as may be practicable, having regard to their competency, an equal number of names from each division of 100 in the said book, and omitting, so far as may be practicable, as aforesaid, the names of such jurors as shall have been summoned and attended at any previous assizes or general sessions of the peace within the same year."

2200. You would leave that discretion to the sheriff, would you?—Yes, I would; my feeling is this, that the paramount object should be to get a good class of jurors for the due administration of justice; there is another important object, but it is a subordinate one, which is to distribute the duty fairly.

2201. Did you ever have any conversation with Mr. Wilkinson, the sheriff for Wexford, on this subject; he has handed in a paper very much to the purport which you suggest, except that he would not give the sheriff power to omit any name; will you look at that paper (*handing a paper to the Witness from the Appendix of last year*); you will see that he divides the number of jurors in the book into 100 names in each column?—Yes, I see it is so.

2202. Now, instead of taking the names alphabetically as they are in each column, he runs across the table, and he takes from letters A, B, C, and D?—Yes.

2203. And then as you come to the letter with the long names, it does not follow that you take all the letters from that heading, does it?—I do not care how it is done, provided you do not take away from the sheriff that limited discretion I spoke of. I look upon it as a safeguard requiring him to take an equal number from each portion.

2204. Are you aware that all the sheriffs who were examined before this Committee are against having any such discretion?—I am not aware of that fact, but of course it must be an unpleasant duty; however, the sheriff's pleasure, and the interest of the public, are two different things; I do not know of any other officer in whom you could, with equal safety, repose that discretion, and without that discretion I am satisfied that the administration of the law through a jury, will be a mockery in Ireland.

2205. The Right Honourable Marquis put some questions to you with regard to the challenge for indifferency; is there not a great difficulty in proving that?—I do not see any great difficulty, but I am quite sure whether there was difficulty or not, the case would have been tried much oftener in the profession, if it was really felt that there was any partiality.

2206. Is it not difficult to prove that a sheriff has summoned a juror on the panel, from corrupt

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Mr. *Downing*—continued.

motive?—Motive is always difficult to arrive at; but we are all very familiar with cases in which you arrive at the motive, by the circumstances connected with the act; there is no more difficulty in this case, than in many other cases where you judge of a prisoner's intention by the way he committed the offence, and the circumstances connected with it.

2207. Are you not aware that counsel for the prisoner consider it almost an impossibility to sustain a challenge to the array, for want of indifferency?—No, I am not aware of that.

2208. Do you know of any case in which it has succeeded?—In my experience of 18 years on circuit I do not remember an instance of challenge to the array, and in 20 counties it appears there has not been a single challenge to the array for many years past.

2209. You are aware that the sheriff of Monaghan was removed from the office on account of a panel which he returned, I suppose?—Yes; I know that, and I know the judge's opinion upon it; the way in which the matter was tried was unfortunate. The rule and practice is, that when the challenge is for partiality it should not be tried by any of the jurors summoned, but there it was pressed upon the court to name the first two jurors as triers, and I believe the judge's opinion was strongly against the verdict found by the triers.

2210. Did you say you were often obliged to reverse the decision of the magistrates, on appeal?—I have often had appeals from the magistrates, and I felt no difficulty where it was necessary in reversing their decisions; but I am happy to say that there has seldom been any such necessity.

2211. Is there any appeal to you at all; is it not to the court of quarter sessions, to the magistrates sitting with you?—Yes.

2212. Has not every magistrate a vote on that appeal?—During the 16 years that I have sat in Kildare we have never had to put a question to the vote on the Bench except in granting licenses.

2213. But is it not the law?—Yes.

2214. Now, with regard to the power of fining, I think you said that you let the person fined make an affidavit to show cause why the fine should be remitted, and that the case should be heard at the next court of quarter sessions?—The juror presents a petition, which is heard at the next quarter sessions.

2215. You know that at present a person who lodges an appeal must enter into recognisances, and go through a good deal of preliminary expense?—Yes.

2216. Would it not be of great importance that the man fined should have the power of filing an affidavit in your court, and attending the next session to show why the fine should be remitted?—Yes.

2217. You get rid of all that formality of entering into recognisances, and of employing an attorney, and incurring an expense equal to the fine almost?—I do not require an attorney to be employed by the juror, but I would make the appeal as easy as possible, only that I would have the fine entered as, of course, for non-attendance.

2218. But you would postpone exacting the fine until you give him an opportunity of showing cause next session?—Just so.

Mr. *Downing*—continued.

2219. Then you said, I think, that you would give notice to every man on the jurors' list previous to the investigation at the court of quarter sessions?—Yes, before a man's name was put on or taken off.

2220. But would not that cause great expense?—No, I think not. In the English Bill it is so.

2221. At the present time it is always posted at the court-house, is it not?—Yes.

2222. Is that quite sufficient, do you think?—Perhaps that would answer. All I mean is that I would give fair publicity, so that a man's name should not be put on or taken off without his having the opportunity of knowing.

2223. You suggested that there should be a special sessions held by the magistrates to revise the lists?—Yes.

2224. Are you aware that there was under the former Act a special sessions held, and that the magistrates would not attend?—Under the 3rd & 4th of Will. 4, there was a sessions.

2225. And they did not attend, I believe?—I think that would not be so now. Under the 3rd & 4th Will. 4, my recollection is that the magistrates were bound to attend at a session held in the quarter sessions town. My suggestion is, that they should attend in their own petty sessions districts. The great value of that is that the magistrates would be sure to attend in their own districts, though they might not go a distance to the county town, and you would always have the benefit of their local knowledge.

2226. I understand you to say that you would give an appeal to the chairman from the decision of the magistrates?—Yes.

2227. Would you not have the whole tribunal assembled at the court of quarter sessions when you had the chairman and the magistrates there?—I do not think that you would want the magistrates to attend; I have not the magistrates present when I revise the list.

2228. No; but supposing the law was changed as you propose it should be, would you not have a tribunal at once competent to try the whole case, with all the officers attending there?—You have yourself suggested the difficulty, viz., that the magistrates do not attend.

2229. Not at the court of quarter sessions?—No, not at the court of quarter sessions; at least that is my experience; I should be glad if they did attend more.

2230. But if they did attend more, would not that be the proper course?—If you could ensure a sufficient number of magistrates to secure for the chairman the benefit of their local knowledge of each district, that might be the best course; but we have in Kildare 15 petty sessions districts. Without any trouble they would attend in their own districts, and the result would be that you would have in that way a better first revision.

Mr. *Verner*.

2231. You think that the magistrates would give more attention to it if your plan were adopted?—I am quite sure that they would. The magistrate of each district would then only have to give his attention to his own particular part of the list, whereas you will get very few men who will come and stay long enough to go over the whole list of the county; they will say, "I do not

Mr. *Verner*—continued.

not know anything about this district;" and they will go away.

Mr. *Bruen*.

2232. I will now hand you the oaths of the sheriff and the sub-sheriff; will you kindly turn to the line which I have marked with regard to the summoning of the juries (*handing a Paper to the Witness*), and tell me if that does not enable you to answer questions that have been previously put to you?—Yes. This is an answer to the Marquis of Hartington's questions. I see it is the high sheriff's duty also; he swears that he will "make due panels of persons able and sufficient, and not suspected or procured, as is appointed by statute." There is therefore a duty laid on the high sheriff as well as on the sub-sheriff to see that proper men are returned on the panel.

Mr. *Bruen*—continued.

Mr. *Downing*.

2233. That is to say, "according to the statute"?—You cannot define by statute "suspected or procured man," though you might define a "competent or sufficient man."

Thursday, 11*th June* 1874.

MEMBERS PRESENT:

Sir Michael Hicks Beach.
Mr. Bruen.
Viscount Crichton.
Mr. Downing.
Mr Arthur Guinness.
Mr. Mulholland.
Marquis of Hartington.
The O'Conor Don.
Sir Colman O'Loghlen.
Mr. Plunket.
Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, BART., IN THE CHAIR.

Mr. JAMES MURPHY, Q.C., called in; and Examined.

Mr. *Murphy*, Q.C. 11 June 1874.

Chairman.

2234. Do you hold any official position?—Yes, I hold, and have held, since the year 1866, the position of Senior Crown Prosecutor for the County and the City of Dublin.

2235. In that position have you had opportunities of judging of the operation of the Jury Laws?—In that position I have necessarily had opportunities of judging of the Jury Laws in criminal cases; necessarily in criminal cases, by reason of that official position of Senior Crown Prosecutor for the County and City of Dublin. But I have also had the good fortune to enjoy considerable nisi prius practice in Dublin for some years past, and I have been able to form an opinion of the working of the law in civil cases also in the County and City of Dublin. I go the Munster Circuit, and on the Munster Circuit for some years past I have been engaged in most of the records tried. I have had an opportunity of judging of the operation of the Jury Laws in all civil cases in the Munster Circuit. Also, in consequence of the official position which I hold in Dublin, I am necessarily brought a good deal into communication with the Crown Prosecutors on the Circuit, and take an interest in knowing the nature of all criminal cases and the result of them; and in that way I have ample experience of the jury system in the Munster Circuit, which comprises the counties of Clare, Limerick, Kerry, and Cork. I give those counties in the order in which we go circuit.

2236. You had experience of juries under the old law, I suppose?—Yes, I had considerable experience of juries under the old law, both as junior and also as senior.

2237. How did that system work, in your opinion?—In Dublin, in my opinion, in civil cases, the juries were open to the same objections that are mentioned by Mr. Justice Morris in his evidence. In criminal cases, where the jurors did not attend with the same readiness, but attended in pursuance of a summons, I think, under the old system, we always obtained excellent jurors in the court-house in Green-street. The objections to the jurors in civil cases are stated by Mr. Justice Morris in his

Chairman—continued.

evidence; a good many jurors in Dublin made it perhaps somewhat of an office, and were too ready to attend, and a great many were very anxious to absent themselves, and when there was a difficulty in obtaining jurors, we saw some persons attending that we would rather had absented themselves, and a great many absented themselves that we wished to have been present; but in criminal cases we had always excellent jurors in Green-street. So far as the county of the city of Dublin is concerned, I think, in most of the civil cases we have now very fair jurors; at least, each jury could be made very good with a little alteration, but in criminal cases we have not at all, in attendance at Green-street now, the same class of jurors. The special jurors, unquestionably, in civil cases are in the county of Dublin very objectionable now. You may have a special jury in the county of Dublin at the present time, and may have seven or eight fit and competent men with regard to position and otherwise for the trial of an important issue, as good men as could be obtained in the United Kingdom, but you might have associated with them four or five who cannot read, and any one of them holding out, may mar all the beneficial effects which you derive from the other jurymen. At trials in criminal cases in Green-street, if a large panel is summoned, and a good attendance secured, we can obtain good jurors, but if it is a case of any importance or magnitude, into which anything like party or class feeling may be supposed to enter, in order to obtain good jurors, the Crown solicitor is obliged to order a vast number to stand by, much more than we were ever required to order to stand by in former days, and much more than we like; one of the last important cases tried in Dublin was the case of a man named Robert Kelly; the charge against him was shooting with intent to murder; the crime was committed at the top of one of the very well-known streets in Dublin; he was taken, almost red-handed, in the act, I may say. He had been tried, before the recent Act had been passed, once already: there were at that

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that time very few jurors ordered to stand aside; it was almost taken for granted that there could not he a jury found who would hesitate in finding the man guilty, because the evidence was so conclusive; however, there was a disagreement; those things are always known when the cases are over; jurors always say how they divide; one man held out obstinately, and another man held out, I believe, not quite so obstinately. But the next time Kelly was put on his trial it was under the New Jury Act; at that time the Crown solicitor set aside 42 jurors; there was a disagreement, and a disagreement of a considerable number. I believe the jury were divided by five to seven, so far as we could ascertain; the evidence was made, if possible, stronger than it had been on the first occasion; no clearer or more convincing evidence could be adduced in any case. The crime had been almost admitted by the man immediately when seized; in fact it had been admitted. Although 42 of the jurors were set aside there was that disagreement. At the next trial there were 32 put aside, and there was a conviction in that case; it was a very objectionable thing to be obliged to put aside so many jurors in open court, but the Crown solicitor considerd that it was absolutely necessary. The effects of the Act of Parliament, in my judgment on circuit, have been much more serious; the Act has altered the class of jurors, I think, very much for the worse; it has reduced them in every way.

2238. You are now speaking of Lord O'Hagan's Act, I suppose?—Yes, the recent Act of Parliament.

2239. Have you noticed any change since the passing of the Amending Act last year?—Very little, in my judgment.

2240. Neither in Dublin nor on circuit?—I think in Duhlin there has been a sensible alteration, but I think very little on circuit; when the Act came into operation first, I think it was at the spring assizes of 1873, and its results in Ennis at that time were perfectly appalling.

2241. In what way?—One case that every one was astounded at was a case where a man was indicted for shooting at a Mr. Creagh, with intent to murder; the blunderbuss with which he was armed had burst, and a portion of the man's hand was blown off and it was found on the spot; he was arrested, and of course the identification was irresistibly certain in that case, and there was not a reasonable chance of disagreement, but he was actually acquitted in that case. I do not think that any man in court could possibly have doubted that the man was there and fired the shot. There was a circumstance which took place in the court before the swearing of the jury, and also after the acquittal, which was a perfect disgrace to the administration of justice.

2242. Is that the case in which the man asked for his hand to be given back to him?—The judge ordered that, I believe, when the constabulary asked what they should do with it. I was not engaged as counsel either in defending or prosecuting in that case, but persons connected with the prisoner pointed out jurors in court who, as they said, "had come 20 miles to try the boy"; and the jurors adjourned with the prisoner's friends, after the verdict, to a puhlic-house, in order to have a merry-making over the result. I know that in that case complaints were made of men being challenged

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on the part of the prisoner, who had come some distance, as the phrase was, "to try the boy." The cause assigned, and a very good one, was this: "We have as good men as he is for this case, and we will find them for him." We want this man for another case. There was another case, in the other court, which was heing tried at the same time, and in that case there was an acquittal. In the case in which a man was indicted for shooting at Mr. Creagh, who was a gentleman, the Crown solicitor was not able to obtain any assistance, or any private information as to the jurors whom he had ordered to stand aside. In the case that was going on in the other court, the party who was prosecuting was a farmer; he knew a good deal of those who ought to have heen set aside, from knowing the immediate neighbourhood, and he was able to give the Crown solicitor such information as enabled him to set aside some of those who had come from a distance to be on the jury. There was another case at, I think, a subsequent assizes in Clare. Baron Deasy was the presiding judge, and he told the jury that it was a case of very aggravated assault upon a member of the constabulary, who interfered only in a fair way in some rioting case, and he was, I believe, set upon hy both parties. However, the case for the prosecution was clear, and the identification complete. Witnesses were called for the defence, and Baron Deasy, who by some previous cases had been made aware of the difficulty of obtaining a verdict, told the jury in express terms that even putting the witnesses for the prosecution out of the case, if they helieved the witnesses for the defence, they were bound to find the man guilty, and yet that man was acquitted after a very few minutes' hesitation. The prosecutor, at the next court of quarter sessions, brought a civil action against the prisoner for the injuries which he had received, and as he was very wisely advised, he laid the damages at 19 *l.* 19 *s.*, so as to prevent the defendant obtaining a jury, in order to have the case determined by the chairman; and the chairman gave a decree, without hesitation, for the amount. The injuries were proved, and the fact that the man committed the injury was proved. The man paid the money, and never entertained a thought of appealing from the decision of the chairman.

Sir *Colman O'Loghlen.*

2243. Mr. John O'Hagan was the chairman in that case, was he not?—Yes, a most able and competent man. At one of those two assizes (I forget which) a man who was prosecuting, for some assault, a man of the farming class, said that there was no law in the country now, and it was no use striving to prosecute a man who had beaten or otherwise injured another. So far as my experience goes in any case which may be a case of agrarian outrage, or even in a case of a faction fight or serious assault occurring hetween farmers or farmers' sons, and so on, there is very little use in prosecuting in a great portion of the South of Ireland at the present time.

2244. You do not apply that remark to the whole of the south of Irelaud, do you?—The results have heen very disastrous even in Limerick; cases of tbeft, such as stealing a cow, are very unusual in Ireland, and in the south of Ireland there is very little crime of that character. I have stayed in houses in the south, and there is

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very little regard paid to locking up places at night in Clare, Limerick, and in Kerry; there are no thefts and no burglaries committed; a burglar would not be allowed to live in the country, he would be set upon by the population and hunted from the place: he would be very soon discovered, and they would need no assistance even from the police to get rid of him; robberies or thefts of cattle are very rare, the peasantry would very soon put them down, and there have been some cases in which, though they were conducted with great secrecy and skill, they were very soon detected; few cases occurred, but they were quickly put an end to, but the class of crime consisting of agrarian outrages and family feuds are very deplorably common in Ireland, and need very much to be repressed; and the operation of this Act of Parliament particularly in Limerick is such that its results have been most disastrous. There is a quarter of Limerick which Sir Colman O'Loghlen knows very well, a place called New Pallas, the very richest portion of the soil in the county of Limerick, where there is as fine a class of peasant population as you ever looked upon. The men and women are of a very superior class in appearance and in wealth; but unfortunately a feud exists between them, which has divided them into what they call factions of three and four years old, and the terms have just as much meaning to them as they have to any Member of this Committee who never heard of them before; they may be traced down through particular families, but no one knows the origin of them; some terrible crimes, not to say savage assaults but brutal murders, have occurred and very recently.

Chairman.

2245. Was not there a dispute generations ago about the age of a bull, upon which these faction fights are founded?—Yes; perhaps about the age of a bull or a horse, but I do not think that there is even any reliable tradition with regard to that. The scenes that are proved in court in some of those faction fights are most shocking; you will see them arranged in court, 50 on one side, and 50 on the other, and in the very next assizes you will have them change places, 50 on the one side and 50 on the other.

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2246. Was not that a case before the recent Jury Act?—Yes; there was one terrible case of murder before the passing of the recent Jury Act, and in that case the parties were convicted of manslaughter; I am only speaking of the scenes that are exhibited, and how degrading they are to any population, especially to such a population as this. In that case it was proved there were three or four young women present when a man was being murdered by a party of a dozen or more, and the exclamation of the women was, "Give it to him so that he may never stir again."

Chairman.

2247. But do you think Lord O'Hagan's Act has made things worse?—Yes, it has in that respect; at the very last assizes one of those cases came on for trial before Mr. Justice Fitzgerald; there was a disagreement, and there was an adjournment of the assizes, and that case was tried again; there was a disagreement again, and the parties were not convicted.

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2248. Is it not the fact that in that case one of the jurors did not appear, by some misadventure?—It was an abortive trial, at all events. I believe the Crown were very ready to have the advantage of one juror not appearing, from some infirmity that had occurred to him during the night, for I believe they had very little hope of a conviction; the judge was very glad the jury were discharged on the first trial; the next time there was a disagreement; now since that, two cases have occurred in the district, which I believe would not have occurred if there had been a conviction in that case.

2249. Do you not know that in that case in which the first disagrement took place, and in which the second trial was abortive, the party is at present in jail for contempt of court?—Yes; the judge being very anxious to get something done, as the result of the trial, the man was committed for contempt of court for three months, because he threatened one of the jury, who, as he had been informed, had held out against him; that is to say, he was not ready to acquit him. Of course, so far as the fights, which occurred immediately after the assizes, are concerned, he was not present; but I believe that the two cases that have occurred since would not have occurred, if the law had taken its due course in the case that was tried at the assizes. In one case I think the man who was beaten is dead, and, in the other case the man is still lingering on, but his skull was fractured in two or three places; I am certain it would never have occurred with the class of jurors that we had formerly in the county of Limerick.

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2250. What remedy would you suggest for this state of things; would you suggest a return to the old jury system?—If it could possibly be done, I would, certainly; so far as the south of Ireland is concerned, I do not think there was, practically, any complaint with reference to the working of the old system. I never heard, in criminal cases, that innocent men were ever said to be convicted; I never heard that, in civil cases, wrong verdicts were found by reason of the partiality of jurors summoned from any practical class. The jurors that we had, the special jurors in civil cases, under the old system in Clare, Limerick, and Kerry, and in Cork, both the county and city, were as intelligent and competent men for civil cases as could be found in any country, I suppose, in Europe; at least, so far as my experience went.

2251. Do you mean by the old system, the system of selection by the sheriff, or the system of forming the jury lists?—The system of selection by the sheriff: when we went to the county, in trials, in civil cases, we used often to see the same faces, and we knew who the special jurors were; but they were men of that class, that any attempt to tamper with them would be out of the question.

2252. In your opinion, did the jury list, under the former system, really represent those who ought properly to be on it?—I think it unquestionably did.

2253. But do you think it represented those who ought legally to have been on it?—In the counties I have mentioned, I am sure of it. With regard to going into every particular qualification, as to this man or that man, whether he was a freeholder,

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freeholder, perhaps you might point out some man who might not be a freeholder; but, so far as the working of the Act went for the trial of civil cases and of criminal cases in counties, we had the men that ought to be where they were, in the jury box. I never heard it stated, in criminal cases, that an innocent man was convicted, I never heard, in civil cases, that partial verdicts were given. You might, perhaps, meet with one exception in a couple of hundred, but that is all.

2254. Do you attribute that more to the way in which the jury list was formed, or to the mode of selection by the sheriff?—I attribute it more to the mode of selection by the sheriff. There was never a charge of any partiality against the sub-sheriff in any of the counties which I have mentioned; the high sheriff and the sub-sheriff varied in politics and religion, and so far as I am aware, there was never a charge of the kind against them, nor was there among the population of the south of Ireland. I can also speak of the Leinster Circuit. In all the Leinster Circuit, and in the Connaught Circuit, there was never such a suggestion as was made with regard to some Orange riots in one or two counties in the north of Ireland. I never heard it in the south or west of Ireland.

2255. Would it be your opinion that it would be a satisfactory change if the power was restored to the sheriff of selection from a jury list formed under the system now in existence?—I think you will never have satisfactory juries furnished under a mere rating qualification. I feel certain that you will not take, for instance, the Bill now introduced for England; it is in many respects, I think, far better with regard to the qualification, but in addition to that I would have on the jury list a good many persons in the county who would most fitly represent the intelligence, wealth, and position of the county, the same as those that were under the Act of William the 4th, say, for instance, sons of peers, baronets, justices of the peace, esquires, and their eldest sons. They are much interested in the peace and prosperity of the county, and they ought to be on the jury list, perhaps even more than their fathers.

2256. Do you think it would be an easy task to form a correct list of that kind, and how would you suggest that the information should be obtained for it?—The information can be obtained if it is delegated to a proper officer, and if he is made responsible for it, and looks on it as part of his duty, and receives some payment. You could get several persons who would perform the office with strict fidelity. Take the barony constables, for instance, they know every man in their respective districts.

2257. But some of the men that you spoke of might be non-resident; in that case would you still have them on the list?—No; not those who were non-resident

2258. How would you suggest that the rating qualification should be altered?—Perhaps leaving it as it is in the Amended Act with regard to lands, and altering it with reference to household rating, would be a great improvement in the county of Dublin especially, and in some of the other counties in Ireland with which I am acquainted. And even if you keep up the rating qualification as at present, it would vastly improve the class of jurors that you would have in places like Limerick and Cork; if you threw the two venues into one, you can get a very great number of intelligent men by the household rating in the city of Limerick and in the city of Cork; the class of common jurors there have, perhaps, not changed much for the worse.

2259. It would give you a better jury in those faction cases, would it not?—Yes, far better; those men would not countenance such a system as that; they would not be influenced by terror or sympathy. As to the farmers of the county it is not fair to them, and it is a charge they would gladly be rid of; they do not want to be on a jury when their neighbours may have been in a faction fight, and they would meet them at the next fair, and perhaps suffer for their independence on the jury. The only difficulty that you would have in the county, would be to obtain persons ready and willing to serve.

2260. In what way would you propose to amend the household rating?—I would have the household rating of 12 *l.* made to apply in all substantial towns throughout a county; perhaps with the exclusion (which would be a great benefit to themselves) of publicans; I am sure that they would be very glad to be exempt for they would be likely to suffer very much for giving adverse verdicts where party feeling is concerned.

2261. Have you anything to say with regard to the mode of summoning?—In Dublin, the county and the city at present, the mode of summoning is through the Post Office; that was confined to the city in the original Act of Parliament, I think, and in the Amending Act it was extended to the county, and it has proved very unsatisfactory. We had a panel of 80 returned by the city sheriff for the Appeal Commission, and at the first call of that panel only 18 answered to their names; they were called again, and fines were imposed again and again for several days, and never more than 30 answered at any time. Fines were imposed, and results of inquiries upon those fines showed that out of the 80 which were returned, 25 were dead, or had changed their residences, and, of course, they were not available. If the service through the Post Office was still continued it should be effected within such time as to enable the sheriff to ascertain whether the parties were dead or had changed their residences; at present he says he has no means of ascertaining; he says, "As I am confined to the alphabetical list, I take so many names, and I send out the summonses as directed, through the Post Office, but whether the people are dead or alive, or whether they are living in the places that the summonses are directed to, I have no means of ascertaining; it is not my duty or my business." In the country I would certainly suggest that if all the people were summoned by the constabulary in the different districts it would be a good thing. If the barony constable returned at each petty sessions the names of the persons within the district who were qualified to serve according to such a qualification as would be fixed upon by the Act of Parliament which may be introduced for the purpose, and the magistrates assembling at the sessions to have the power of revising the lists, I apprehend you would be able to obtain juries with whom the people in the country would be perfectly satisfied. The farmers themselves I know in civil cases have often complained when juries have been sworn; they have seen men on

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the juries, perhaps men of their own class, perhaps something better, or perhaps something worse, and they have complained very much from having such men sit on their case; they say, "What does he know about it; how can he judge?"

2262. Can you suggest anything to the Committee with regard to special juries in criminal cases?—I would certainly suggest, that by the fiat of the Attorney General, or by application to the Court of Queen's Bench, there should be the power of obtaining a special jury in certain criminal cases. It is suggested in the English Bill, and I would, if possible, assimilate the Acts of Parliament in the two countries, and not have constant complaints and references on one side or the other as to differences that existed, whether in favour of what is called the people on one side, or the better class on the other. There is also a provision in the English Bill which would be a most salutary measure in civil cases in Ireland; the effect in civil cases should be looked to almost more than in criminal cases. In criminal cases if the sheriff return a very large panel and the Crown performs the very odious duty of setting aside a vast number, still if there is a large panel and a good attendance you may be able to obtain a tolerably good jury sometimes; but in civil cases you have no such power at all, and there may be great difficulty in any case requiring particular competency or skill; and civil cases sometimes require a vast deal more attention than criminal cases where class feeling may be supposed to prevail; one man holding out will prevent a verdict being given. In many cases where a jury have been summoned, and a couple of men have answered, we could assign no sufficient ground to warrant the judge in saying, "That man must stand aside"; but we have felt perfectly convinced that there would not be a verdict when that man was in the box; but if the parties could only exercise the power of peremptory challenge as to two or three in civil cases, it would be far more satisfactory, and you would have far less disagreement.

Mr. *Downing*.

2263. I think I learn from your evidence, that you highly disapprove of Lord O'Hagan's Jury Act?—Yes; I think the result of the Act has been very unsatisfactory. I am sure the Act was introduced with the intention of altering the old system for the better, but I am afraid that the interests of others were too much sacrificed to the want that was felt in Dublin, and perhaps in the northern counties; but so far as I ever knew, there had never been complaints in the south.

2264. But you are aware that we are now inquiring not into the south of Ireland alone, but into the jury system for all Ireland?—Yes.

2265. Your opinion with regard to the conduct of the sheriff is confined, of course, to your own knowledge of the south of Ireland, is it not?—To my own knowledge of the south of Ireland, to the circuit which I go, and to constant reports which are made to me from those on other circuits; for instance, the Leinster and Connaught circuits.

2266. Have you ever heard of a man being acquitted by a jury of 12 orangemen, when four witnesses swore that they saw him fire a shot?—Yes; that was a long time ago.

2267. The prisoner in that case was defended

Mr. *Downing*—continued.

by the present Lord Chief Justice Whiteside, was he not?—Yes.

2268. Have you not heard of a great many similar cases in the north of Ireland; do you remember the case of Hughes?—I do not recollect it by name.

2269.—Did you hear that the High-Sheriff of Monoghan was removed from office in consequence of the jury which he returned to try Hughes?—Yes.

2270. Was that within the last five or six years?—Yes; I heard that there was a challenge to the array, and that it succeeded; I know that more from seeing it in evidence before this Committee, than from any other means of knowledge.

2271. I mention those things, in order to show that we must take a general view of the operation of the law in the whole of Ireland; is not that so?—Yes.

2272. As to that case, in which you gave a very vivid description of what was done after the jury had acquitted the man, and those extraordinary circumstances of going to a public-house to drink together, do you state that of your own knowledge?—No; I did not see it done, but I heard it currently reported in the town, and by men on circuit.

2273. I take it for granted that it is entirely hearsay?—Of course; I do not mean to say it is a mere flying rumour, but it is hearsay from persons who, I supposed, had ample opportunities of ascertaining the facts.

2274. But you know, do you not, as well as any man in the world, that in half the cases tried at the assizes, the gentleman at the bar and the solicitors talk the matter over and give currency to these rumours?—Those facts, I endeavoured to ascertain with some particularity, before I relied upon them. In a civil case in Limerick this occurred at a trial before Mr. Baron Deasy; a question arose as to the validity of a will; the only point at stake was the interest in a very small freehold, held on the Kingston estate for one life, and that was a very old one; for the plaintiff we considered that we had made out a very clear case, showing perfect competency on behalf of the man to make the will. Baron Deasy charged the jury, saying that he failed to see any evidence to show incompetency in the testator, and also stating that the execution of the will, according to the statute, had been duly proved; the jury were for some time in consultation, they came out and handed to the learned Baron the result of their consultation, and their verdict finding against the will, provided the plaintiff gave the defendant so much money; complaints were made to me by the attorney with regard to the conduct of some of the jurors, and as to their being seen, the night before, drinking with the defendant or some of his witnesses; the case came on for second trial at the last assizes, and, on cross-examination, I got out from the party who was principally interested in resisting the suit, the fact that he had been, on the intervening night, drinking with one or two of the jurors; it was not a matter of hearsay at all; it was proved on oath.

2275. After a jury is discharged, is it not quite a common thing for the most respectable of the jurors in the county to go and talk it over with other parties?—Yes; but this was not such a case as that; I got out in cross-examination that

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that the man said he did not know that the man was a juror, and had never spoken to him before, but after great difficulty he admitted that he invited the juror to drink, though he said that there was another man who had invited both of them, whom they had never known before. Putting all the facts together, I could not believe but that that was done with the intention of perverting justice in some way.

2276. Do you not know perfectly well that before the passing of Lord O'Hagan's Act, parties very often resorted to undue means in canvassing, and otherwise influencing jurors?—I know that they often did, but I say the fact that they did it before the Act, and the fact that they do it since the Act, and that they will do it, no matter what Act of Parliament you pass, renders it more necessary, not merely desirable, but more necessary that you should get a good class of men on the jury, and that you should get, in fact, the best class of men, who would be above being tampered with.

2277. Do you think that the greater a man's wealth, the less the influence that can be brought to bear upon him?—*Cæteris paribus*, I do say that poverty has always been considered some temptation.

2278. Do I understand you to say that you consider the jurors now taken from the farmer' class are liable to corruption?—I think that the lower you go down in the scale, the more exposed the parties are to influence; the uneducated or the poor could be more easily influenced than others.

2279 Is there not as much moral sense and high feeling among the lower class of people as in those above them?—I dare say there may be a very high moral tone among the lower classes in Ireland, but I say that in all countries, taking the average, the higher a man is in the social scale, the more the reliance that you may place upon him in such matters.

2280. Now did you say that generally speaking there were seven or eight intelligent men on a jury?—I did not say generally speaking, but you may get seven or eight intelligent men on the jury. I was confining myself to the county and city of Dublin. I said that in civil cases there is great inequality in the persons that we see in the box as special jurors.

2281. Then you only spoke of the county and city of Dublin?—Just so.

2282. I suppose the case of Kelly that you have referred to, was tried by a jury of the City of Dublin?—Yes, he was tried by a jury of the City of Dublin.

2283. The first trial was under the old Act?—Yes.

2284. And there was disagreement?—Yes.

2285. The second trial was under Lord O'Hagan's Act?—Yes.

2286. And there was disagreement again?—Yes.

2287. On the third trial there were 32 jurymen ordered to stand by, I believe?—Yes.

2288. And there was a conviction?—Yes, there was.

2289. There was a very important question raised on the medical testimony, was there not?—No, not at all, that was another case; both of the accused had the name of Kelly, but the christian name was not the same. With regard to the Talbot case, you say there was an important

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question raised on the medical testimony; I think there was no question of the kind in the case. Unfortunately it was discussed in court for four or five days, but it was a very sorry exhibition in a court of justice, and it was after the discussion that the jury was told that it had nothing to do with the case. The reason why I say it had nothing to do with the case according to the law, is this. It was the case of a man firing at another, and putting a bullet in his head; the man dies some days afterwards, and it is said, in consequence of unskilful treatment; but I say that that does not affect the question of his crime in law.

2290. The Lord Chief Baron differed with you, did he not?—No, he did not, because after four days' investigation he said it had nothing to do with the case; however, that point had been decided in a case in England previously to that.

2291. Now with regard to setting aside jurors by the Crown solicitor, I think I understood you to say that it was rather an unpleasant duty?—I think it is, and you would think so too, if you were acting as Crown solicitor.

2292. But you would give that power to the sheriff in the shape in which it was given under the old system, would you not?—I would give power to the sheriff to select fit and proper persons out of the jurors' books.

2293. Do you think that would be quite as satisfactory to public opinion and the sense of justice in Ireland, as having it done publicly in court by a responsible officer?—I can only give you the result of my experience, and from my conversation with everyone I have ever spoken to from the south or west of Ireland, including all Tipperary, Galway, Waterford, and all the counties in the south and west; I never heard it suggested that the sheriff selected partial juries; I never heard the public, or any portion of the public, express any dissatisfaction with them.

2294. The question I put was this, you say that it was a very unpleasant duty on the part of the Crown solicitor to set aside 32 jurymen?—Yes.

2295. I follow that up by saying you would give that power to the sheriff, in effect, because he could in his office make a selection of jury from the panel?—Yes.

2296. Do you then think that giving that power to the sheriff would be as satisfactory to public opinion and the sense of justice in Ireland as having it done by a responsible officer in a public court?—I should certainly say it would; when you come into court supposing there are 100 men summoned as jurors and 100 men attend as jurors, there are the two opposing parties arrayed there, namely, the prisoner and those defending him, and those who are prosecutors, and the officers of the Crown. Now those who prosecute the parties, such as the Crown solicitor, are looked upon, when in Court, as arrayed against the prisoner; he may consider himself as simply a public prosecutor seeking justice, and it is his bounden duty to do nothing unfair to obtain a verdict; but they are all of them looked upon there, by the public, as parties arrayed against the prisoner. Out of 100 persons first called, if 60 answer, the Crown solicitor may set aside 30, whereas the prisoner is only able to set aside 20; and it is considered a hardship on the prisoner; it is considered that he is at a disadvantage there; whereas, let there be 60 men summoned by an officer who is not considered

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sidered as an officer acting for the Crown against the prisoner, then the public, unless they see some real or tangible wrong, or objection to the men sent upon the jury, will not cast imputations on any one, or think anything unfair has been done.

2297. Are you aware that you differ with Mr. Serjeant Armstrong on that point?—I regret to say that I am aware of that.

2298. And with Mr. Hamill, the chairman of the county of Kerry?—I suppose so.

2299. With Mr. Leahy, the chairman of that very county where all those terrible fighting people are?—Yes.

2300. And with Judge Monaghan?—Yes.

2301. They are very great authorities in their different positions, are they not?—Yes; I may differ with Mr. Serjeant Armstrong, with whom I am very intimate, and I have very great respect for his opinion; but, on the other hand, I agree with Mr. Bolton, a very experienced officer of the county, and of whom Serjeant Armstrong said that he was as competent as any man in Ireland to form an opinion.

2302. Did Mr. Bolton say that he would go back to the old system, and give the sheriff power to select?—He said that under the old system there was no complaint, I think.

2303. In his own county?—You must give some person the power of selection; give it to the high sheriff, if you please, and let the magistrates assembled at petty sessions revise. Judge Fitzgerald, in his evidence with regard to what occurred before him in Clare, Kerry, Limerick, and Cork said, that out of 50 men in the box an enormous number should have permission to go home because they were not able to maintain themselves in the city, and because many of them could neither read nor write, and were totally unfit to serve. Judge O'Brien looking round the court, and seeing one of the old jurors in the county of Limerick present, requested him to act as foreman in every case, counsel gladly assenting. I think selection by the Sheriff better than such scenes in court.

2304. Were you at the spring assizes in Cork last time?—Yes

2305. Did you hear both Judge Fitzgerald and Judge Barry compliment the juries on their verdicts?—I do not know; they may have done so; there are some persons who are a little more ready to compliment than others. The verdicts in all cases in which the juries have been complimented were perhaps guided and directed almost by the judges. It is a very lamentable thing, in my judgment, to hear Judge Fitzgerald himself admit that both in civil cases and in criminal cases he was forced to form an opinion and endeavour to work the jury to a conclusion similar to what he had formed himself. I believe that I was in every civil case in the court, with the exception of one or two; there was scarcely any point at all that would try a jury, with the exception of one. Judge Fitzgerald exerted himself in that one case as much as ever any advocate could have exerted himself to obtain what he thought a right verdict; he told the jury that if they had any regard to written documents, or that written agreements should regulate dealings between man and man, they should find a verdict in a particular way; they did not find their verdict in that particular way, and he certainly did not compliment that jury.

Mr. *Downing*—continued.

2306. Do you approve of very strong charges from judges?—I do not say that I do; I say that a judge should not convert himself into an advocate.

2307. Are you aware that after very strong charges from judges a single juror has sometimes held out, and proved to be in the right?—I was not aware of that.

2308. Do you remember the Doueraile case in Cork?—No, I have heard of it.

2309. Did you not hear that Mr. Morrough held out against 11 jurymen, and against the judge's charge; and in that case the next day, when tried by 12 Protestants, there was a verdict of acquittal?—I did not hear that. I know of a case in which there was a trial for a very brutal murder committed on a summer's evening in the county of Limerick (this I know); one of the jurors held out on the first trial, and on the next trial there was an acquittal, in a great measure because, I suppose, there had been a disagreement at first; but with regard to saying that the first jury or the second jury were right, I do not think that any one arrived at that conclusion. It was a clear case for a conviction.

2310. Are there not more brutal cases occurring every day in England than in Ireland?—No doubt that may be; there is almost a total absence of a particular class of crime in Ireland, and the most degrading crime, perhaps, if we must draw a distinction, Ireland is as free from them as any country in Europe; I say that in a great proportion of the counties in Ireland a man may live as safely as in any part of the world. In the very counties I spoke of you need not care to lock your doors at night unless you are obnoxious to a particular class. If a landlord brought an ejectment he would be very imprudent if he did not lock his door after dark; I knew one case in which a man was shot when he was at tea, in a room at the top of the village; in another case a man was murdered at 12 at noon, in the domain of the man in whose employment he was; in another case, in the county of Clare, a man was murdered at noon-day; in your own county you were on the grand jury in the Howard case; he was shot on a summer's evening coming home, with a little boy at his side.

2311. Had not those cases occurred before the passing of Lord O'Hagan's Act?—No, since the Act. There have not been trials unfortunately in those cases: in those cases no man was made to stand at the bar for trial; in the three last murders committed in Clare, Limerick, and Cork, no person was even brought to trial.

2312. What has Lord O'Hagan's Act to say to that?—I will tell you. What I say is, that this shows how anxious we should be to have a good class of jurors. As the honourable Member knows, in the county of Cork, in a case on which he was on the grand jury at the last summer assizes, it was proved that collections were made for the defence of the man who was believed by the parishes in which the collection was made to be the murderer, and the priest was obliged to speak from the altar against what he considered the abomination of funds being raised, as he considered, expressing sympathy with crime. For that crime, committed under circumstances that you are well aware of, neither the public nor the Crown has been able to place the party even on his trial, and I say there

Mr. *Downing*—continued.

there must have been in the county a great amount of what is called sympathy with that particular class of crime, or else evidence would not be so utterly hidden from the public prosecutor. And therefore I say, you are bound to see that you have on the juries men who are above and independent of that kind of sympathy.

2313. Did not all this occur in former times as well as at the present time; do you not know from your own knowledge that collections have been made to defend men who have committed agrarian outrages in the north of Ireland, who have committed murder?—Yes, that has been done, and it may be done again; and what I say is, that if you are to deal with such cases you must have good juries, so that when they are brought to trial on evidence, such as was adduced in Creagh's case, where the man was taken redhanded, you will have men ready to convict. In a country where you have a particular class of crime, which is the only crime that degrades the country, and where you have a difficulty in bringing the parties to trial, surely when they are brought to trial, when the evidence is clear, convincing, and conclusive against the guilty party, we should have such juries that punishment may justly follow the crime.

2314. Now with regard to this very county that you have given us a deplorable account of, namely, Limerick, do you agree with the chairman of that county in his evidence?—I do not give a deplorable account of the county of Limerick.

2315. Then take New Pallas?—I say it is a deplorable thing that in a place like New Pallas, where there is as fine a peasant population as a man ever saw, that faction fights cannot be put down.

2316. This question was put to Mr. Leahy: "Now with reference to those instances of odd jury trials which you spoke of, do you not think that those might be paralleled very well by similar cases under the old system," and he replied, "Yes, perhaps so;" do you agree in that?—No, I do not; under the old system I am perfectly certain that you would not have had these faction fights continuing in New Pallas. I think you have given them several years longer to live by this new system.

2317. Mr. Leahy was asked: (*Q*) I do not understand you to say that the new system is to be entirely credited with those particular instances, for many similar cases must have occurred under the old system, must they not? (*A.*) Yes; a great many; but not so many, I think, as we now have. (*Q*) In your own sessions at Limerick, during the last quarter sessions, how many cases had you of disagreement in criminal cases? (*A.*) I had very few; I think there was but one. (*Q.*) Therefore you cannot complain of the Act of Parliament as far as the court of quarter sessions at Limerick are concerned? (*A.*) No; it has been comparatively speaking, a county in which there have been a great many convictions, but it requires very great exertions on the part of the chairman to get a verdict at all"?—I should like to ask Mr. Leahy what he called great exertion. If you call that a wholesome state of things, well and good. I would suppose it better to have 12 men who are as competent to form an opinion as to the guilt of a man as the judge himself. The juries under the old system in Limerick and Kerry, were in my

Mr. *Downing*—continued.

opinion, in most cases more competent to form an opinion than the judge himself, from their personal experience of the county, but now you have with whip and spur, as it were, to try to work them up to a verdict.

2318. I understand you to say, that you would like to have the same law for England and Ireland?—Yes; so far as the laws can be assimilated. Under the new Bill in England, the sheriff has the power of selection from the jury book.

2319. I suppose you know that there is not the same political and religious feeling in England as there is in Ireland?—I dare say that there is not; but I know that, in the south of Ireland, whether it is a Conservative or Liberal, or whether it is a Protestant or Catholic, high sheriff or sub-sheriff, I have had experience of them both. As far as my experience goes, we never perceived any difference in the formation of the juries. The gentleman who has been subsheriff for the county of Limerick for some years now, is Mr. John Ryan, who is a Roman Catholic; and I believe his predecessor was a Roman Catholic; but no one could say a jury summoned by a Protestant sheriff is different from a jury summoned by a Roman Catholic sheriff.

Mr *Bruen.*

2320. With regard to Mr. Leahy's evidence, the answer put into your mouth was, "Comparatively speaking, a county in which there have been a great many convictions, but it requires very great exertions on the part of the chairman to get a verdict at all." Then, going to Question 1333, he says, "I say that the verdicts at the Limerick sessions have been, on the whole, rather satisfactory since the passing of the late Act; as I have already stated, at the Easter sessions there were 17 cases of aggravated assaults; four were found guilty of aggravated assaults, and two of common assault, and 11 were acquitted." Now, even with great exertion on the part of the chairman, it appears that out of 17 cases only four were found guilty of aggravated assaults; in your experience, is it not the case that the Crown very seldom put a person upon trial for a case of this kind unless there is a very strong case?—Not unless there is very cogent evidence; and I think, to any one having experience in public prosecutions in Ireland, merely stating the figures would lead him to conclude that there must have been a great failure of justice there; you have certainly in full operation the great constitutional principle, that it is better that 99 guilty persons should escape than that one innocent person should suffer.

2321. What you want to secure especially in many parts of Ireland, where is much public disturbance, is, that there should be competent and independent juries?—Yes; for the public safety I think it is necessary to try to check any particular class of crime that may be running riot at any particular period, and my firm conviction is that at present, considering how the criminal law is administered in Ireland, and with what safeguard innocence is fenced round, it is next to an impossibility that an innocent man could be found guilty; there may possibly be in some cases mistaken identity, but if the question turns on identity, unless the evidence was very overwhelming, the jury will not be advised to convict, nor will they do it; there must be 12 men

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to agree upon it, and if there was a reasonable doubt that question would he pressed upon them again and again. The parties conducting the prosecution are public officers, who would think it a base betrayal of duty to bring forward a false witness, or if on detecting falsehood they did not put the man aside, or expose him to cross-examination as much as possible; that is the principle on which we conduct puhlic prosecutions, and as to any innocent man being found guilty, it is nearly impossihle; and if you have strong-minded and independent jurymen the impossihility would he all but absolute.

2322. Do you consider with the facts hefore you, in many districts in which disturhances of the law occur, that you have got under the present jury system those fearless and independent juries which you say are necessary?—I am satisfied that we have not.

2323. Had you such jurors hefore the change of the law by Lord O'Hagan's Act?—In counties that I had experience of and those that I had knowledge of, from the constant reports of men engaged in them, I say there was as fair a class of jurors as could be found in any part of the United Kingdom, or could be possihly desired. When we looked into a jury box in Clare, or Limerick, or Kerry, we never considered whether they were Protestants or Roman Catholics, or whether the sheriff was a Protestant or a Roman Catholic. We saw men who were capable of trying prisoners, who could judge of handwriting, and could understand circumstantial evidence. Take the case of forgery or undue influence in disposing of large property by will. We want independent men and capable men, not men who merely follow the wand of the judge, and find a verdict as if he told the crier to stand up and tell them how to find a verdict. If judges have to exert themselves to obtain verdicts, you had better do away with juries altogether; it is better than having jurors who are sent home as unfit for the duty, or treated as ciphers when they get into the hox.

2324. You have been asked a question, which seemed to suggest that Mr. Bolton objected to the power of selection by the sheriff, but I find this in his evidence, "It comes to a question of selection, and whether that power should exist or not, I think that the power of selection ought to exist, and that it should he left with the sheriff"; is that your opinion?—That is my decided opinion; it has been suggested that, perhaps, it would now he impossible to return to that plan, as it is what has been called "blown upon"; but it is suggested in the Bill for England, and I venture to say there would be very little objection to it by the people of England; let the system of selection be left to the same person in Ireland—to the sheriff, or to the barony constables and to the magistrates, or somebody else; no one considers whether they are Catholics or they are Protestants; whoever you put into a position of responsibility in Ireland, I think you will find him, as a general rule, to discharge his duty satisfactorily. Whether the county inspector of the constabulary, or sub-inspector of the constabulary, no matter what creed or religion they are, they will do their duty independently and faithfully, I think.

2325. Do you not think that you are fortified in your opinion, with regard to the power of selection heing left to the sheriff, by the opinion given by Mr. Chief Justice Whiteside, Judge Morris, Mr. Robinson, and Mr. Hamilton?—Yes; when Mr. Downing read out his list to me, I could easily have mentioned names on the other side.

Mr. *Bruen*—continued.

2326. Are you acquainted with the county of Dublin?—Yes, very intimately, hoth in civil and criminal cases.

2327. I find that the qualification for special jurors in the county of Dublin is as follows:—"A net annual value of 150*l*., or upwards, in respect of lands, tenements, or hereditaments appearing on the rate book of any union to he situate in any city, town, or village within any of the said counties"; now has not that qualification, in some cases, shut out from the jury list men who are thoroughly well qualified to be upon it?—Yes, it has; and it has admitted some who ought never to be upon it. In the cases tried in the Probate Court, in the county of Dublin, involving questions of great importance, and requiring persons of good clear judgment, and able to form an opinion on the evidence, we have had some men, as to whom it was a perfect scandal to the administration of justice to see them called on to serve as jurors; it would be far hetter to aholish the jury system altogether, and leave it to the judges to decide, than to have such men on juries

2328. Do you not think that an amendment of that qualification should be introduced in any new Bill?—Yes, I think it would be requisite; but, before laying down what the qualification should be, you must have a selection; you must have regard to competency. That is a duty imposed on the sheriff or the magistrates, having regard to the competence or fitness of the men for the duty.

2329. Would you be inclined to give a household qualification taken as compound?—In that way you would obtain a great many persons who occupy villa residences, who are gentlemen of considerable intelligence, in the county of Dublin, men of a far higher order of intelligence than those let in under the present qualification.

Mr. *Plunket*.

2330. I suppose you have read the English Bill in which discretion is allowed to the magistrates in revising the lists of jurors, which Bill is now going through the House of Commons?—Yes.

2331. Do you think that that legislation could be wisely applied to Ireland in exactly the same way?—The discretion allowed to the magistrates in revising the lists is merely, I think, to strike off the list persons who come before them and make certain objections.

2332. In Clause 19 of the English Juries Bill you will read, "it shall be lawful for the said justices, upon satisfaction from the oath or affirmation of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve on juries, or that he is disabled hy any permanent infirmity of mind or body, or in other respects unfit to serve on juries, to strike his name out of such list"?—Yes.

2333. Do you think that that could be safely applied to Ireland?—My opinion is that it could; and besides that, that Bill leaves to the sheriff the power of selecting from the jurors' hook.

2334. But the power is given in the English Bill to the magistrates, is it not?—My opinion is that

Mr. *Plunket*—continued.

that that could be done, the names of proper persons being returned by the barony constables. Every magistrate in the district knows pretty well the men in his own district.

2335. Would it not be a good plan if the magistrates so sitting in sessions had the assistance of the stipendiary magistrates?—I take it for granted that they would have the assistance of the stipendiary magistrates, and also the assistance of the inspector of constabulary and the barony constables; but the great thing is, that if you leave it to be "no person's duty," it will not be done; whereas if you impose it on a particular individual, or particular individuals, it will be done. Impose any penalty you please for breach of duty, but make it someone's business.

2335*. Do you think it would be necessary to have separate sessions for the purpose of revising the lists, or would you have it done at the ordinary petty sessions?—I would have it done at separate sessions, because that would attach importance to it. It would be slurred over at the ordinary quarter sessions.

2336. You have stated that you do not know in your experience of any unjust convictions in the south of Ireland; do you extend that to what you know of the criminal trials in the county and city of Dublin?—Yes, certainly; as far as my experience goes, I cannot see how it would be possible, except in a case of mistaken identity. There was one case I know in Dublin, in which a man was accused of challenging another at night, and presenting a pistol at him and obtaining possession of his money; the man was arrested two days afterwards. There had been two men challenged on the same road the very same night. As I say, the man was arrested afterwards; he was a very poor man, and he was undefended, but he stated to some one that it could be proved that on such a night he was in such a place, and we, by the power we have, directed the trial to stand over to the next day, and sent a constable by train to the place mentioned, who brought up three witnesses to prove that the man was with them in Kildare that night. That was a case of mistaken identity.

2337. I understood you to say that you would be willing to go back to the old system of selection by the sheriffs; under the old system the sheriff was appointed by the Crown; if the sheriff were no longer to be appointed by the Crown, we will say, in the City of Dublin, but by the municipal corporation, his position depending ultimately on popular suffrage, do you think that it would be desirable in that event to vest the power of selection in the sheriff?—I would not do so unless he was a public officer.

Mr. *Verner*.

2338. The tendency of one of the questions asked you was to throw doubt on the impartiality of the sheriffs in the north of Ireland. Have you read the case of Hardy against Sullivan, tried in Dublin in the year 1861. The subsheriff of Armagh was accused in the "Nation" newspaper of being partial in his selection not only of juries, but in his panel, was he not?—Yes, and I think it was established that there was no foundation for the charge.

2339. Do you remember that it was successfully disproved?—Yes, I think it was successfully disproved.

2340. Have you not known instances of a

Mr. *Verner*—continued.

juror being summoned in two courts at once, under the present law?—Yes, that occurs again and again.

2341. Do you remember a case of that kind before the Recorder at Dublin?—Yes, I was there when one of the grand jury complained that he was also summoned to the Court of Queen's Bench; of course he was not fined in the Court of Queen's Bench. But details of that kind could be easily worked out supposing an Act were settled in other respects.

2342. Do you remember the case of Mr. McDermot who was fined in the Court of Queen's Bench?—Yes; I recollect his calling out from the jury-box in a panic, and I told him that the fine would not be imposed. With regard to this alphabetical order, you often have three or four men in the same firm summoned. The last time in the Recorder's Court, a constable of police appeared in uniform in the box, being called upon to serve as a juror; I have known several little absurdities of that kind, but I do not attach much importance to them; those could all be remedied if the Act was good and efficient in other respects.

2343. You think that that kind of thing results from the power of selection being taken away from the sheriff?—Yes, of course; he not having the power of selection there must necessarily be from this alphabetical arrangement, some inconvenience to individuals; but a much more serious evil is that out of a panel of 85, when only 18 answered at first, and afterwards 30. Fines were imposed; we found that out of 25 who were summoned several of them were dead, and others had left, changed their residences, and thus had the means of avoiding the summons, and who very wisely did not trouble themselves about getting the summons.

The *O'Conor Don*.

2344. You have referred to cases tried in the Probate Court in which you said that the appearance of the jurors was absolutely scandalous?—Yes, some of them.

2345. Have you gone into statistics with regard to the number of cases tried at the courts, and whether the verdicts were satisfactory or otherwise?—I know that in some cases the verdicts were unsatisfactory, and there were special jury cases where gentlemen and gentlemen's servants were summoned as jurors. I think it is calculated to get rid of trial by jury altogether, if you have a couple of butlers, or servants, summoned on the same jury with persons of a very different class.

2346. But is there not a large number of cases in which the verdicts are satisfactory, though the juries may appear to be unsatisfactory?—Perhaps in those cases if you have four or five intelligent men, you get the verdict of those men, but still if a case arises in which a man holds out, a disagreement will take place, which is a great injury to both parties.

2347. Have you had much experience in the Court of Probate?—Yes, I have had a tolerably fair experience. I think the leading man in all the nisi prius practice in Dublin, is Mr Serjeant Armstrong, and perhaps after him I come with others.

2348. Are you aware that Mr. Serjeant Armstrong stated before this Committee, on the 8th instant, that he had made it his business to inquire into the statistics of that court. He says at

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Question 2004, "The statistics given to me officially by the Clerks of the Rolls in the different courts, there has not been 4 per cent. of expressions of dissatisfaction with the findings of the jury in civil cases, and there have not been 2 per cent. in which the court have agreed with the expression of dissatisfaction. So satisfactory is this, that I see no necessity for meddling with the Act at all;" were you aware of that?—No, I was not aware of that, nor even now that I am aware of it, does it alter my opinion, that if you want to have a jury to try a case in which property is involved, you should have 12 competent men who are capable by education of forming an opinion of the law, and of the evidence brought before them. There are no cases in which greater intelligence is required than in cases trying the validity of deeds. We had a very important case some months ago in the Rolls Court; we obtained a jury under the old system; we had 48 special jurors of the county of Dublin, the parties being allowed to knock off 12 each; out of the 24, the jurymen who were selected were nearly all mercantile men, and were not men to be guided at all by the judge, and were not men to be controlled or guided by counsel or any one; they were as capable of forming independent opinions and accurate judgments on the evidence as, perhaps, the judge himself. The Master of the Rolls said it was a very important case with respect to the validity of a deed; whether there was a forgery or not, and he said the jury were capable of being beforehand with the counsel and the court in every difficult point which arose, and the case was one teeming with difficulties. It is very questionable if the verdict would have been the same if you had had five or six men out of the 12 who were not capable of forming their own judgment or opinion.

2349. Then, is the opinion which you express formed on general principles, and not on an actual examination of the per-centage of cases in which justice was administered?—When you come to an induction of that kind, you should have a very considerable area of cases to decide upon. I have formed my opinion generally on the facts.

2350. You mentioned to the Committee a number of individual cases in which you considered that, under the new Juries Act, very extraordinary verdicts had been given; are you not aware that equally extraordiuary verdicts were given under the old system in many cases?—In my opinion verdicts have been given under the new system that could not possibly have been given under the old system.

2351. Do you remember the case of a man named Barrett, who fired at Mr. Lambert?—Yes.

2352. Were you the prosecutor in that case?—No.

2353. That case was tried three times, was it not?—Yes.

2354. It was tried twice in Dublin, I believe?—Twice in Dublin? I think not twice.

2355. It was tried the last time in Dublin under the old system?—Yes.

2356. And there was an acquittal?—Yes.

2357. Was not that as clear a case to an outsider as the case of Kelly?—No, not to an outsider; not at all; it might have been clear to you or me, but certainly the facts of the case were not so clear at all as Kelly's case.

2358. Were not the main facts these: that this gentleman was fired at in his domain, and that Barrett, the man who was suspected, was immediately arrested in a railway carriage (he being a man who was engaged in the Post Office in London), with a pistol recently discharged in his pocket, which pistol he had shortly before purchased in London?—Yes.

The O'Connor Don—continued.

2359. Did not Mr. Lambert swear positively that Barrett fired at him?—Yes, but there was a question as to the means of identification, and also with regard to a variation in his evidence. But in Kelly's case the man was arrested in the street where the shot was fired: he was the only man running down the street at the time; he had fired the shot at the object of the assault, and he had fired another shot when he was being pursued, when he was taken the revolver had two barrels recently discharged, which must have been the one that was fired at the top of the street and the other that was fired 40 yards down it, and he had some bullets in his hands corresponding to those found in the pistol. There was no other circumstance that could have brought him there; he presented the pistol again and again at those who tried to arrest him, and when he was taken he said, "Now you have me make the best you can of me."

2360. But did not the acquittal of Barrett at that time create great surprise in Dublin?—It did.

2361. The case was considered clear against him, was it not?—Yes, the case was considered clear against him, but there was a contradiction in the evidence of the prosecutor with reference to the man's identification and the means of identification.

2362. You have stated that you never heard of a single case under the old system in which it had been alleged in the south of Ireland that an innocent person had been found guilty?—Yes.

2363. Did you ever hear of the case of Cormick in Tipperary?—Yes.

2364. Was not that a case of this kind?—No; I believe everybody thought the man was guilty.

2365. Were there not articles in all the papers taking a different view of the subject?—I don't know there were; but I heard persons who had means of particular knowledge speak of the subject, and I never heard it alleged that the men were believed to be innocent; there was a disagreement first and then there was a conviction.

2366. I understood you to say that you would have separate sessions for revising the jury lists?—Yes.

2367. And that you would not revise them at the general court of quarter sessions?—Yes.

2368. Are you aware that it was the old principle that the magistrates never attended at the special sessions?—If the duty is not cast on some one it will not be done.

2369. But do you think that our former experience in these matters, in times when the magistrates were supposed to hold those special sessions, is one that would justify us in returning to it when we know that they did not attend?—I can only say that under the old system we had excellent jurors when the sheriff made the selection.

2370. Are you aware whether the magistrates did attend, as a matter of fact, under the old system to revise the lists?—I believe, as a matter of fact, that they did not attend.

2371. Then what reason have you for supposing that

The O'Conor Don—continued.

that if we went back to the old system they would attend?—If you went back to the old system as it was, in all probability they would not attend, but if you imposed the duty on the barony constables in each district to bring the list before that particular sessions to see that it was revised by the magistrates there, I apprehend that it would be done.

2372. I think that you suggested just now that you would have a separate particular sessions for that purpose, was not that so?—Yes.

2373. I ask you, then, what reason you have to suppose that the magistrates would in the future, any more than in the past, attend at those sessions?—If it is made a portion of the duty of the magistrates, if they are informed of it, and if the barony constables have the duty imposed upon them to bring it before the magistrates at the special sessions, I think it would be done; they would be bound to make a report upon it, and you would then at least have duly qualified persons placed on the list, and afterwards you would have the sheriff to select from that list revised before the magistrates. The great object of that would be to allow the parties to have an opportunity, if they were not liable to serve, of getting their names erased.

2374. Are the Committee to understand that you propose to revert exactly to the old system, both with respect to the making out of the lists in the first instance, and the selection by the sheriff in the second instance?—I say that, in my experience in the south and west of Ireland, there was no objection whatever to the old system.

2375. But would you propose to revert to that system as a matter of fact?—I would, certainly, as a vast improvement on the present system.

2376. Can you suggest to the Committee anything that would be better than either?—The only suggestion I would make is this: if the barony constables bring the list before the magistrates, when the magistrates have revised it, then let any magistrate make objections, or any one else make objections, and then let it come before the chairman of the court of quarter sessions again at a general sessions in September or October, held for the purpose, and let it be revised in the presence of the chairman. I would respectfully suggest that, if you have the revision before the magistrate at petty sessions, and then have the list again examined before the chairman, you will have no alteration in the list sent in by the persons who make the return, whether the poor law union clerks, or the clerks of petty sessions, except this, that you will have certain persons struck off, and then it is only afterwards, by the sheriff that you would have fit persons selected with regard to their competency.

2377. In whatever way you have the list made out, you would give the sheriff the selection of the jurors to be placed on the panel?—Yes, a selection having reference to their fitness and competency for the office.

2378. You would give the sheriff the absolute control which he had before in that respect, would you?—I would throw upon him the absolute responsibility, and I would attach penalties upon him if he was found guilty of partiality.

Sir *Colman O'Loghlen*.

2379. With regard to the challenging of juries, I understand you to say that you approve of the

Sir *Colman O'Loghlen*—continued.

principle of giving a peremptory right of challenge in civil cases?—Yes, certainly; it is essential that it should be so, in my opinion.

2380. Is that a provision which you approve of in the English Bill?—Yes, it is there to a very limited extent; it is only six. It would be much better to have three taken out of the box before they are sworn.

2381. But you think that there should be a right of peremptory challenge given to both plaintiff and defendant?—Yes. There are cases where before people go into the box, though you can state a legal objection, you know that you are not likely to have a verdict, and there is a second trial in consequence.

2382. Is the present number of peremptory challenges in criminal cases, which is 20, too large, in your opinion?—It depends on the number of jurors that attend.

2383. Would you propose to reduce it to 12, or to reduce it at all?—If you have a good class of jurors it would not matter, and that number is not too great.

2384. You would not agree with me in proposing to limit the right of the Crown to put by jurors?—No.

2385. Would you extend the right of peremptory challenge in civil cases to misdemeanours as well as to felonies?—Yes, for in some cases misdemeanours may be as serious as felonies; it may be a mere statutable distinction, and sometimes it is optional whether you indict a man for felony or misdemeanour.

2386. You spoke about special jurors in criminal cases; do you think that there ought to be the power to try criminal cases by special jurors?—Yes, that would be a great advantage.

2387. You think it would be an advantage to give the Crown the right of having the cases tried in that manner?—Yes, in a particular class of cases, for the sake of the country itself and for the sake of the people placed on the jury, who would be exposed to some peril in the discharge of their duty, perhaps.

2388. There has been some evidence given here by other witnesses with reference to the expediency of doing away with the City of Dublin venue, and having only one venue; are you in favour of that?—Yes, and in Cork and Limerick too; that would be an advantage.

2389. I am speaking of Dublin alone?—Yes, certainly. A great many jurors are common both to the county and the city; men are living in the suburbs who are, perhaps, mercantile gentlemen of the highest class, and they ought to be on the jury panel.

2390. It would be an improvement, you think, to amalgamate the county and the city of Dublin?—Yes, certainly.

2391. And in Cork and Limerick the same?—Yes, certainly. You will recollect that in the city of Cork, under the old system, the special jurors were as intelligent men as could be found in the United Kingdom. With regard to politics or religion, it never occurred to you to consider it.

2392. As a matter of fact, under the present system there is no complaint of the city of Cork jurors in civil cases, is there?—None; but with regard to the criminal cases at the assizes I call them little better than ciphers in the county.

2393. Did you ever hear any objection made by the Crown to the jurors appointed to try

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Sir *Colman O'Loghlen*—continued.

criminal cases under the old system. Do you recollect the Phœnix trials in Cork, as they were called, where Chief Justice Whiteside came down to prosecute?—Yes.

2394. Do you remember the postponement of the trial there in consequence of the nature of the jury panel?—Yes.

2395. Are you aware that Sir Matthew Barrington, the then Crown solicitor, stated that it would be his duty to order to stand by the first 80 jurors on the panel, before the case went to trial?—I was not aware of that; but that may have occurred, and perhaps there was good reason for it.

2396. Now, with regard to disagreement in criminal cases involving political and religious matters, that was not an unusual thing under the old system, was it?—No; under both systems, if political or religious matters are introduced, you will always have disagreements.

2397. Do you recollect the case of Charles Gavan Duffy, and do you remember how many trials took place?—In cases of that kind you will always have disagreements. I speak of agrarian outrages, but with regard to those cases of prosecution for political offences, I hope that I shall never see them again in Ireland, for they would be all a farce.

2398. You said that you saw no particular improvement at the present assizes under the Amended Act; do you remember, at the spring assizes in Cork, a trial for robbery of arms at the barracks?—Yes.

2399. The jury twice disagreed, I believe?—Yes.

2400. And at the present assizes they agreed?—Yes; you secured a good jury at the Cork assizes the last time, but you gave permission to a great number of gentlemen to go home; there was a very large panel, and you got a jury on the third trial; the defence that was made was, that it was not a crime at all, but some patriotic exertion on the part of the prisoner.

2401. At the last assizes the jury was so far improved that you obtained a conviction?—Yes, at the last assizes you got 12 men to convict, the miracle being that any man could be got to disagree; it was a miserable spectacle.

2402. With regard to the selection of the jury by the sheriff, is it not the fact that the sheriffs had no power to select special jurors at all until very lately; until within the last 10 years special jurors were always struck after the panel was made up and balloted for, and 48 of them chosen; was not that so?—Yes.

2403. Therefore, as far as special jurors are concerned, the sheriffs had no power of selection?—Just so; but there was a particular qualification for special jurors under the Act of William 4th.

2404. Up to the time of the Common Law Procedure Act, the sheriffs had nothing to do with the selection of special jurors, I believe?—Just so.

2405. They were selected by ballot, were they not?—Yes.

2406. This system of the sheriff's selecting them is a modern innovation, is it not?—Yes; but under that system you obtained the best special jury that could be devised, and it would have been a great mercy if it could have continued; out of the 48, each party had a right to strike off 12; and after that winnowing you were

Sir *Colman O'Loghlen*—continued.

sure to have, in any part of Ireland, as good a jury as could be had.

2407. I believe that the jurors are selected by ballot in civil cases?—Yes, and they ought to be selected by ballot in criminal cases also; that is a case of monstrous absurdity. If there is any such things as getting on their friends, in order to attend the trial of the boy, they have an ample opportunity; they see the list, and they know that they will be called in certain order, and you give them an enormous advantage in that way.

Marquis of *Hartington*.

2408.—I understood you to say that you are of opinion that no revision at the sessions can exclude incompetent jurors from the list?—You could not have it done by revision simply; of course the revision ought to be really a selection, at least so far as excluding incompetent persons is concerned, but I do not think that that would be done by mere revision in the mode suggested. I do not believe that you would do anything more than striking off a certain number. If a magistrate knows a man to be dead, or bedridden, he will have him put off; but still a great many men are put on who ought not to be on.

2409. But would it not be better to give to the revising authority, whatever it may be, the power, and to impose upon him the responsibility of striking off all incompetent persons?—It would be very desirable, but the thing can only be well done, if the duty is imposed on some one or more persons.

2410. Rather than return to the old system of selection of the panel, would it not be better to give to the sheriff or sub-sheriff, or some public officer, an absolute right to strike names off the book without assigning any cause?—Of course, when I suggest to give the sheriff the power of selection, I give him that power also; at least, it is the right, to act as if the names were not there; I see no objection to it, if the sheriff or sub-sheriff is directed to strike off incompetent or unfit persons, but he must be able to show that he did strike off only incompetent or unfit persons, and did not act with partiality; if you threw the responsibility upon him, and make him legally liable for it, it would be very desirable.

2411. I ask you whether it would not be better to take any means whatever to purify the jurors' book, and then to have the panel indiscriminately selected from that book rather than to have a nominally wide area of selection limited practically by the exercise of a power by a person who is practically responsible?—I think it would be better if that could be done; it would be better to have one jurors' book with 300 or 500 fit and competent persons than to have 600, and then 100 of them put back by the sheriff.

2412. But you doubt whether any revision would secure that result?—I do not see how that could be done.

2413. If absolute power were given to the magistrates, they could do it, could they not?—Of course, if absolute power were given to the magistrates, they could do it, if they chose; but they will not do it; they will not strike off any person as unfit to serve on the juries of the county, unless they are compelled to do so; the stipendiary magistrate or the county inspector may

Marquis of *Hartington*—continued.

may do it, but the ordinary magistrates of the county will not do it.

2414. Would they not take the trouble, or would they not take the responsibilty, do you think?—They would not assume the responsibility; I do not think they would object to the trouble; but it would be a disagreeable duty; they would think that it should be done by some responsible paid officer.

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Mr. Joseph Burke, called in; and Examined.

The O'Conor Don.

2415. You are Sessional Crown Solicitor for the County of Roscommon, are you not?—Yes.

2416. And President of the Society of Sessional Crown Solicitors of Ireland?—Yes.

2417. Have you also been practising as a solicitor at the sessions?—Yes; for the last 23 years.

2418. As President of the Society of the Crown Solicitors of Ireland, have you been in the way of ascertaining the views of the Sessional Crown solicitors on the working of the Juries Act?—Yes.

2419. Will you be kind enough to state to the Committee what has been the impression which you have derived from communications with your brethren in that office?—We are clearly of opinion that the present system of arranging the jury panel is far preferable to the old one, but with certain alterations which I would beg leave to suggest.

2420. Will you allow me to ask you this; is it not the fact that most of the criminal business of the country is done before the court of quarter sessions?—Yes; about three-fourths of the entire criminal business of the country is done at the court of quarter sessions by us as Crown solicitors; prosecuted by us entirely.

2421. Would you undertake to say that the great majority of the Sessional Crown solicitors who conduct that business are confident that Lord O'Hagan's Act is a great improvement on the old Act?—Certainly.

2422. I understand you to say that you consider that certain alterations and improvements might still be made in that Act?—Yes.

2423. Will you be kind enough to take the Act of Parliament in your hand, and give your views, first with regard to the qualification schedule in the Act of 1872. Do you see any reason why the counties that were placed in clause 2 should not be placed in clause 1?—I think they should be placed in clause 1.

2424. The difference between clause 2 and 1 is with regard to the rating in towns and villages, is it not?—Yes.

2425. Is there any reason why a man holding a house in a town, say in the county of Roscommon, rated at 12*l.* a year, should not be on the jurors' list, while a man holding a house in the county of Dublin or Cork would be on the list?—I think that the houses in towns in clause 2 are not, generally speaking, valued at 20*l.* at all; but of course houses in towns such as Belfast ought to be rated very considerably higher.

2426. Practically, placing the value at 20*l.*, is excluding a large number of the mercantile class, is it not?—Yes; a large number of the mercantile people of intelligence.

2427. Are you not of opinion that they are the very best class of jurors?—Yes; they are very good to mix with the farming class.

2428. Do you think that the valuation in towns might be made lower than 12*l.*?—No, I think not.

The O'Conor Don—continued.

2429. I believe that you concur with other witnesses that poor-rate collectors and distributors of stamps ought not to be exempted from serving on juries?—I think they ought not; when I say distributors of stamps I mean persons in towns who, by way of evading the responsibility, have now come to sell stamps; they are not the ordinary stamp distributors of the county.

2430. You heard Mr. Murphy's evidence, did you not, with regard to the revision of the jurors' lists?—Yes.

2431. Do you agree with him that the revision ought to be at special sessions held for the purpose?—Certainly not; I have had experience of revisions both ways. I do not suppose Mr. Murphy, as counsel, has ever attended one of these courts at all, but we have to do it.

2432. What would you propose as the best means of revising the jury lists?—I should say that it should be done by the chairman and the magistrates at the court of quarter sessions, where all the magistrates attend regularly; sometimes we have 14 or 16 magistrates attending at the court of quarter sessions.

2433. Do you mean to say that you have that number attending at the ordinary court of quarter sessions?—Yes, at the ordinary court of quarter sessions of each division.

2434. You would have the revision carried out in open court, I suppose?—Yes.

2435. The objections to be raised in open court?—Yes; the sheriff is bound to attend that court also; he is present, and he could have an opportunity, just as any magistrate should have an opportunity, of suggesting that such and such a person was not a fit person to be on the book at all.

2436. Will you look at the 13th section of the Act; have you any remarks to make to the Committee on that clause, with reference to the preparation of the jurors' book?—At present, when the chairman has revised the several baronial lists, they are handed to the clerk of the peace, and from that he makes out one book in dictionary order, which is the general book; then that book is handed to the sheriff, and there is no copy sent to the clerk of the peace, and no one has any information with reference to the persons on that book except the sheriff himself.

2437. Do you see any evil arising from that fact?—Yes; because there is no possibility of ascertaining by the public whether the sheriff acts in the spirit of the Act, by calling jurors as he ought to call them; no person can test this, in consequence of there not being access to the book; I think the clerk of the peace should keep a duplicate of the book as finally revised, as he did before the passing of the Act, at his office; I would further suggest that everyone interested should be at liberty (because it is now a question

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of each person seeing that his neighbour serves as well as himself) to get a copy of the book, on payment of a certain fee, just as it is with the voters' lists of the county.

2438. In order to do that, would it not be necessary to print the book?—Yes, it would be necessary to print the book; but that printed book would be of the greatest possible service for the revision of the following year; the Crown Solicitor, and the clerk of the peace, and the chairman of the county could always have one of those books before them, and if there was any man during the year who happened to have become incapable, a mark would be put against his name, and at the next sessions it would be considered by the magistrates, and the man's name might be struck off.

2439. At present there is no check whatever on the sheriff, and he may disregard the Act of Parliament if he is so disposed, may he not?—There is no check whatever. The sheriff is at the court of quarter sessions, and no one has a book besides himself. To my own knowledge, people have not been called on juries who ought to have been, while others have been summoned who ought not.

2440. What is the practice with regard to making out the panel of jurors at the court of quarter sessions?—The plan is this: the sheriff sends a number of summonses to his bailiffs in different directions, and there is no panel handed in to the clerk of the peace, as is contemplated by one of the sections of the Act of Parliament, which requires that to be done at the assizes; that is section 18. Accordingly, the sheriff sends the summonses to his bailiffs; they just serve whom they meet. We will say that they go to a market or fair; they find a certain number of persons there, and they serve them with summonses; they make a return the day before the sessions, or the morning of the day, to the sheriff, and he writes out the names of the persons they say they have served. That list is handed, on the morning of the sessions, to the clerk of the peace, and the only inquiry then is before the court with regard to the service of the persons that appear to be on that particular panel so handed in on the day. There is no inquiry with regard to the persons who ought to have been served, and who were not served.

2441. There is no provision in the Act of Parliament for obliging the sheriff to summon persons in dictionary order, is there?—That is so, unless you extend this to the court of quarter sessions, which ought to be done, and then you would have the jury properly summoned.

2442. As three-fourths of the criminal business of the county is disposed of at the court of quarter sessions, do you see any reason for not having as good juries to try cases at sessions as at assizes?—None whatever. In this Act the court at Green-street are treated as in the same position with the court of quarter sessions. I would suggest a remedy which appears to be quite plain. The grand jurors at Green-street and at the court of quarter sessions are to be selected from the special jurors, and they are therefore taken entirely out of the box where the jury has to try the case; they are actually separated and taken away, whereas if the same case has to be tried at the assizes, the full jury panel would be there, the specials and the others mixed up together, and there would be a good jury to try the case. We ought to have as good a jury at the court of quarter sessions, where we do three-fourths of the business, as they have at the assizes to try the same cases.

The O'Conor Don—continued.

2443. You would suggest that special jurors should be obliged to serve at the court of quarter sessions?—Yes; just the same as they are to try cases at the assizes.

2444. Would you require that the sheriff should furnish the panel to the court of quarter sessions before the meeting of the court?—Certainly; if he does not do that we have no means of knowing whether he has properly selected the jury from the book or not. The present return is only of those who are served.

2445. And he returns them only on the morning of the sitting of the court?—Yes; he returns them only on the morning of the sitting of the court, and there is no opportunity of knowing whether anyone is left out or not. As I understand the Act of Parliament, the spirit of the Act is that the names should be taken from the top to the bottom, and initialed so that a person should not be called again until others had been called, and then come on in rotation. To do that the sheriff must make out the panel, and from that panel take out the summonses for the assizes. That is for the assizes, but it is not directed for the court of quarter sessions. The result is that the sheriff may not follow that order at all; if he does not there is no check.

2446. The result is that the sheriff has now the power of selection for the quarter sessions?—Yes, in fact he lets his bailiff do what he likes.

2447. The sheriff's bailiffs are the persons who serve the summonses?—Yes, the sheriff's bailiffs are the persons who serve the summonses.

2448. What is the existing obligation to enforce the service of the summonses?—The man who serves the summons is the servant of the sheriff, this man who wears livery and attends the high sheriff when the judges come in; sometimes the livery is worn by a second man, and fresh buttons are put on for the next sheriff if the sub-sheriff is very economical. That is the man to whom is entrusted the duty, and who is called the proper officer in the Act of Parliament. I do not conceive that he is a proper officer; he is in no way responsible, and nobody has any control over him except the sheriff.

2449. If he neglects his duty what penalty is there?—There is a fine if the case is proved of 10 *l.* on the bailiff, who is worth nothing, but the sheriff is not responsible for his acts under the Act of Parliament, as I conceive.

2450. Do you think, as a matter of fact, that the jurors are summoned in the rotation contemplated by the Act of Parliament?—There are no means of judging, because there is no record.

2451. If there are no records kept, there is no means of ascertaining of the fact?—No, for want of duplicate lists in the clerk of the peace's office, and copies for the public.

2452. To whom do you propose that the service of those summonses should be entrusted?—To the civil bill officers of the county; there are in every county from seventeen to twenty; there is a large number of process servers who are situated at convenient distances all over the county.

2453. You mean the process servers of the court of quarter sessions?—Yes, they are called the civil bill officers of the court of quarter sessions

The O'Conor Don—continued.

sessions, and they are located at convenient distances all over the county; if they were then to get summonses in their neighbourhood for service, they would perhaps have nine or ten summonses each to serve, and that would produce the whole of the jurors that would be required at the court of quarter sessions; they would serve them readily at the same time they were serving the civil bills for every court of quarter sessions; they are bound to be in attendance at the court of quarter sessions from the opening to the close; they are officers under the control of the judge of the court, and subject to dismissal for improper conduct.

2454. You do not think that it would entail on those process servers any great additional trouble?—Very little; they could serve them at the same moment as the civil hill summonses are served, and they would only have nine or ten to serve for each session, and they would be glad to get 1 *s.* a piece for serving them, just as they do for civil hills.

2455. Would you propose that they should obtain a list of jurors from the sheriff?—The sheriff having made out a regular panel, would deploy them nine to one and nine to another, and so on.

2456. Have you any suggestion to make to the Committee with regard to the alteration of the system of fines on jurors for non-attendance?—Yes; with regard to the expenses of the execution of the Act which are charged on the poor-rates, and the county cess, I certainly do think that there ought to be money returned to recoup that expense to the ratepayers, and that could be done by making all the fines that would be charged against jurors for non-attendance, or for any other purpose in the Act, contribute to repay that expense. That would make everybody desirous that his neighbour should attend at the proper time to do his duty as well as himself, and he would keep a watch upon him.

2457. You think that that would have the effect of making every one anxious that a fine should be imposed on the man who did not attend?—Yes; if a greater pressure is put on others by reason of men choosing to stop away, they would not pity them much if the fine went to relieve the expenses put on themselves in the county cess; and if it is to be paid by the county cess, I think one half should be paid by the landlord as well as by the tenant. At present the county cess is all paid by the tenants, unless under the new settlings since the Land Act.

2458. Have you any other suggestion to offer to the Committee?—I may observe that, with reference to what Mr. Murphy said with regard to returning to the old system of special juries, there are two sections in the Act, namely, Sections 32 and 33, which would protect and preserve all the existing rights of the court at Green-street; the court may now direct a jury to be formed at present as it was done under the old system. The 39th section also applies to the same thing. Then, under the 41st section, the marginal note is, "Names of jurors to be ballotted for." A person would naturally infer that jurors in all cases are to be ballotted for; but I find, on reading the 41st section, that it does not apply, nor is it considered to apply by the judges, to criminal cases. But I think it purported to apply to criminal cases, because I find from the 42nd section, when it speaks of a deficiency of

The O'Conor Don—continued.

jurors, it goes on to say that the additional jurors supplied are to be ballotted for in criminal cases; it was certainly intended, I think; but if it was not the intention, it ought to be corrected. I think that plan would remove a great deal of the objection that I heard Mr. Murphy speak about, namely, canvassing jurors, and having jurors ready to go into the box to give a certain verdict, which was a thing that we used to complain of under the old system. All practitioners knew the practice. When we got a jury panel in civil cases or criminal cases, we never had any difficulty; people appeared thoroughly to understand that it was no harm that their friends were to be in the box; people who cared nothing at all about it were not there, but their friends were, clustering round the box; and counsel would come in, and say, "What sort of jury have we?" They always depended on the solicitor to see that there was a jury there that was satisfactory; but they did not know how they came there. We did know, and we know that the people were desirous that their friends should be there.

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2459. You think, do you, that the ballot in criminal cases as well as in civil cases, would remove that evil?—Yes, if there were 250 on the panel, and if those persons were taken from the whole county at different points, it would be utterly impossible to canvass in that case if they were put into the box by ballott.

2460. You think, do you not, that the amending Act has been a very great improvement on the original Act?—Yes.

2461. And that with the amendments which you suggest it would be a very satisfactory Act?—Yes; but I would suggest the amendment of one more matter, namely, that the rating valuation, Class No. 2, ought to be Class No. 1; it says that the valuation should be 30 *l.* and 20 *l.* in houses; now the houses in small county towns are not valued at 20 *l.* at all, and you have all the shopkeeping class off the jury book; that change would very much improve juries; further, I think that eldest sons of peers, of baronets, of knights, and of magistrates should be liable to serve; of course the magistrates at quarter sessions are abstracted from the jury panel; their eldest sons, who will come into their property, are at present aiding and assisting them, and really managing their estates; but if they are not rated occupiers they would not be on the panel at all; now I say that registered voters having freehold which would entitle them to be on the voter's list would, if they were residents, be persons who, by their intelligence, would help very much to form an excellent jury; I would suggest that at the court of quarter sessions only 12 of the special jurors summoned, and answering to their names, should be sworn as grand jurors, filling up the difference with other persons on the panel from the common jury list; that would preserve the balance of the grand jury and the special jury panel, and it would so mix up the common jury panel with the other, that you would have a good foreman, a good man in the middle, and a good man at the end, which would ensure a perfectly satisfactory jury. I may say here that there is a certain means for this Committee to learn the statistics of all the criminal trials; after each session every sessional Crown Solicitor is forced to make a return to the Attorney General setting out the cause of complaint, the indictment sent up, and whether a hill

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was found or not, and the result of the trial. The Crown Solicitor at the assizes must do the same thing. There is an official return existing for several years back; it would not be at all a matter of speculation to see how it was under the old system and how it is under the present system. I would add that I agree with Mr. Murphy that there is very little crime in Ireland in the shape of burglaries, or robberies, or things of that kind. The chief crime is in riots, assaults, agrarian outrages, and family feuds; but I trace the whole thing back to one little circumstance, and that is that the poor man has no place on earth to obtain satisfaction for any grievance except he appeals to a superior court of law, where it would cost him 70*l.* or 80*l.* to try a trivial matter about a turf bank. The chairman of the county, who is a most excellent judge, and thoroughly respected all over Ireland, people would have confidence in, but he cannot hear an action for 20*l.* or 30*l.* between people who have disputes among themselves about bog, or reclaimed moor, or one man calling another a rogue in the public market. There is no satisfaction except an appeal to a superior court, which is a ruinous thing; the result is that the man says, "Begad, I will fight this out." Pickaxes are used, and assaults take place. Then they go before the magistrates, and the magistrates have no jurisdiction. There is a question of title involved, and then both parties are in the dock at last all about a dispute as to a turf bank, just because they have no other recourse. I think there would be no necessity for one fourth of these cases if we could get rid of what now forces them to fight; there is scarcely any other crime in the country. I think we should go to the root of the evil, and that the chairman of the county should have the power of trying all cases up to 40*l.* I have been a prosecutor for 10 years, and that is the result of my experience in almost every case. This point bears upon what was stated by Mr. Murphy with reference to the county of Limerick about the number of cases being on the books, a certain number being convicted and a certain number acquitted. The practice is that where disputes of this kind arise they come before the magistrates at petty sessions for preliminary investigation. A question of title having arisen the magistrates say, "We will send both of you for trial," and both parties are sent for trial. The Crown prosecutor is in this position, that he knows the parties who he thinks are most seriously in the wrong, and if the jury convict them they have no doubt that the other parties who are only defending themselves ought not to be convicted at all, and they are acquitted, and that accounts for many of those cases mentioned by Mr. Murphy.

Mr. *Bruen.*

2462. You are President of the Society of Sessional Crown Solicitors of Ireland, I think I understood you to say?—Yes, we are Sessional Crown solicitors; we are the persons who have the whole management of the business entrusted to us; we have not the assistance of counsel or the assistance of the Attorney General, unless in special cases where we ask for his assistance, but we are responsible to him immediately afterwards for the conduct of the case. We have to get the evidence together and conduct the whole case.

2463. Did you state that your society had come

Mr. *Bruen*—continued.

to a resolution in favour of the principle of Lord O'Hagan's Act?—I did not say that the society had come to a resolution, but The O'Conor Don asked me if I had made it my business to make inquiries from my brethren, and I say that the result of our conversation was that they were all of opinion, as far as I could make out, except one or two, that it was a great improvement on the old system, but they suggested further alterations.

2464. Then they could not have debated it at any meeting of the society?—No; we were never asked to do so.

2465. I suppose it is in the power of the president of the society to convene a meeting to consider such a question?—Yes.

2466. But you did not do so?—No, certainly not; we were not asked to assist, and we thought it very odd that whereas we were directed to be the persons to carry out the new arrangement, we were not asked to give any assistance before this Committee.

2467. Was the opinion which you obtained in answer to personal questions, or written questions?—To personal questions. A great many sessional Crown solicitors come up to Dublin from all parts of Ireland, and I have asked them one after another, and they have communicated their opinions to me, knowing that I am the president of the society.

2468. Can you tell the Committee what particular points of the new system, as compared with the old system, you have referred to in asking their opinion?—I asked those gentlemen who were aware of the old system as well as the present system, "How did the juries agree? Did they arrive at a proper conclusion? Was there injustice done?" I find the answers to be that everything is done fairly, except that Mr. Boyd, of Tipperary, told me that there were one or two cases where the jury were rather stubborn before they would find a verdict; some assault case; and they had to be talked to a great deal.

2469. You tell the Committee that the opinion of the sessional Crown solicitors of Ireland is perhaps with two exceptions favourable to the change made in the jury law by Lord O'Hagan?—I have not seen them all, but so far as I have seen them from the north, south, east, and west of Ireland, that is so.

2470. You say you have not seen them all; are you aware whether a majority of the whole number have given that opinion?—I cannot say that; I did not know that I was to be examined, I was not asked about it; but if I had been asked I could easily have convened a meeting, and they certainly would have given any information in their power.

2471. But what I want to test is the answer which you gave to the O'Conor Don, to the effect that the sessional Crown solicitors are of opinion that the present system is preferable to the old one?—Certainly, so far as I know.

2472. You now inform me that you cannot say whether those members you consulted were the majority or not?—I cannot say.

2473. Can you inform the Committee, that the members of the society whom you consulted and who gave you that opinion, are the majority of the whole body?—No; I could not say that. Mr. Boyd, of New Ross, sessional solicitor for county of Tipperary, said, that in spite of what he told me, while he objected to the jury in that way, he

Mr. *Bruen*—continued.

he would be very sorry to return to the old system, and I saw him both before and after he was examined here.

2474. You have stated that you have had experience of the different modes of revising the lists in petty sessions?—Yes.

2475. That of course refers to the mode in use before the passing of Lord O'Hagan's Act and the one that has been in use since?—Yes.

2476. I believe the mode of revision before Lord O'Hagan's Act was passed, was that there were sessions at which magistrates attended and revised for the whole county?—Yes, in the divisions.

2477. But it has been suggested to this Committee that the magistrates should meet in petty sessions districts, and revise the lists for the petty sessions districts; that plan has not been actually tried, has it?—No, but my inclination was very much that way. I suggested that the magistrates should be the persons to assist in doing that; it was my first opinion that the best way would be at the various petty sessions, but on consideration of the matter, I recollected that I knew all the magistrates of the divisions were in the habit for the most part of attending at the court of quarter sessions, because there were spirit licenses and so on to be granted, and criminal cases sent from all their different districts; they therefore attend, and on the first day of the quarter sessions you have all of them there; you would be more likely to get them there than at the several petty sessions. The stipendiary magistrate may be sometimes the only person who attends, but if you get the thing into two, three, or four divisions of the county at the quarter sessions, you get the magistrates who know the district well. I would require the petty sessions clerk to be there to assist, and the sheriff would be there, and he would have a great deal of information, and he would use that information if you gave him the right of objection there, and let him explain his objection before the magistrates and the chairman. Supposing there is a division of a county 25 or 30 miles long and 15 or 20 miles wide, a magistrate would not come 30 miles to attend a petty sessions for no other purpose but to certify the lists handed in by the baronial constables. The magistrates down here did not know anything about the men up there, but if you bring them all into the centre, namely, the quarter sessions, you will have the magistrates there from the whole of the county to inform themselves upon the subject.

Mr. *Bruen*—continued.

2478. Is it the fact that the court of quarter sessions town is always the centre of the district?—No; there may be three towns in a division. The magistrates who send forward a case for trial come and attend the several courts. It is only 10 or 12 miles from any one point. They would certainly assemble at the October sessions to settle the list with the assistance of the sheriff and the petty sessions clerk, and the Crown solicitor, if he could be of any service. I have already suggested that there should be a copy of the general jurors' book kept by the clerk of the peace. It ought to be in the clerk of the peace's office, and the public ought to be at liberty to get a copy by paying for a printed copy, and they would by that means have a check on each other; that would be just as it is with the voters' list.

2479. Do you say it is a question whether the sheriff summons jurors alphabetically to the court of quarter sessions?—Yes, I say it is impossible to know it without this test which I propose.

2480. Have you ever heard it suggested that he does not summon them alphabetically?—I know myself that some people do not attend the sessions. I know that the same man has been brought to several sessions, and if the alphabetical order were pursued he would not be there. But there is no test. I have heard complaints made in the court about it. The sheriff says, "It is all right." But you have no test at present.

2481. Why cannot the sheriff be called upon to produce the book to the judge?—Yes; but suppose he is 35 miles, say, from where his office is, or where the book is, there is no help. But there is a very easy remedy, because the clerk of the peace might have the book, and any one might get a copy of it, and it might be produced in court. Perhaps a man says, "My name is Burke, but Mr. Babington and Mr. Barry have not been summoned, and I have been here three times." The sheriff, perhaps, says, "I summoned them." And you then call upon the clerk of the peace to produce the panel, when his conduct would be tested. I think the sheriff, if he had the power of selection, would be inclined not to trouble his own friends by summoning them. I know that under the old system several people never attended as jurors, in my county, who ought to have attended.

Mr. *Burke*.

11 June 1874.

Monday, 15*th June* 1874.

MEMBERS PRESENT:

Sir Michael E. H. Beach.	Mr. Mulholland.
Mr. Bruen.	The O'Donoghue.
Mr. Downing.	Sir Colman O'Loghlen.
Sir Arthur Guinness.	Mr. Plunket.
Marquis of Hartington.	Mr. Verner.

THE RIGHT HONOURABLE SIR MICHAEL E. H. BEACH, BART., IN THE CHAIR.

The Right Honourable Baron DEASY, called in; and Examined.

Chairman.

Baron *Deasy.* 15 June 1874.

2482. YOU are third Baron of the Court of Exchequer in Ireland, are you not?—Yes. Perhaps it would be most convenient if I were to state to the Committee the experience I have had on three circuits; one after Lord O'Hagan's first Act was passed, and two since the amending Act. After the first Act was passed I went the Spring Circuit in 1872 on the Connaught Circuit. My first experience of the working of the Act was in Leitrim. I believe the facts of the case were stated to the former Committee, but perhaps they may not be known to some of the Members of this Committee. The first case I tried was a prosecution for perjury, directed to the chairman of the court of quarter sessions, the perjury having been committed at the preceding sessions. The case was very clearly proved indeed; the only thing that the counsel for the prisoner could say was, that the witnesses for the Crown were all policemen, which was true; they were the only persons who could give evidence; they were very intelligent, respectable men, and not impeached or contradicted. The jury retired, and they came in at about six o'clock, when their names were called over. They were asked in the usual way, "Have you agreed to your verdict?" The foreman handed down the issue paper, signed by him. The question was put, "You say that the prisoner is guilty?" The foreman assented, and no one dissented. I was about to pass sentence, when counsel interposed, and asked me to hear a witness as to character. The jury heard the witness, and I then proceeded to pass sentence. I stated that the jury had convicted him on clear evidence, and that I thought they could not have come to any other conclusion, and that I agreed in their verdict. I passed sentence in the usual way, and went home. Next morning, which was a snowy morning, I saw a group of miscellaneous individuals outside our breakfast-room window at the lodgings. The servant announced that the parish priest of Carrick-on-Shannon wished to see me. He said that he came at the head of a deputation of the jurors to say

Chairman—continued.

that they were for acquitting the prisoner, so he begged me to remit the sentence; I said that the verdict was given in open court, and that the case was over, and that sentence had been recorded, and that they must apply to the Lord Lieutenant. I directed the sheriff and sub-sheriff to summon the entire of that jury that day, and they appeared in the box. I reminded them of what had occurred, and I said, "You were present in court, and you heard me pass sentence; why did not some of you tell me that it was a mistake to suppose that you wished the prisoner to be convicted?" "Oh, my Lord," said one of them, "we did not understand what was going on." They applied to Lord Spencer to remit the sentence, and the man was discharged. In the next trial, which was a similar one, the jury acquitted the man, which was a much less evil than the former case. It was the same perjury; it was a prosecution by the police for obstructing them in their duty. Two men swore there was no obstruction; one was convicted, but with no effectual result, and the other was acquitted, the only ground for the acquittal being that the men were policemen.

2483. Of what class in life were those jurors?—The jurors in Leitrim are never very good; it is a poor county, divided into small holdings. I think Lord Massey told me that he had 800 tenants; he also said that he never had any trouble with them.

2484. Was it your opinion, formed from those cases, and from what you generally saw, that the juries under Lord O'Hagan's Act in Leitrim were worse than they had been under the old law?—I have not had much experience of jurymen in Leitrim, but from my slight experience I think so; such an instance as I have described never occurred before to my knowledge, and I do not think that it would have occurred under the former system. But Leitrim is broken up into very small divisions, and you never could expect a high class of common jurors there. Then in Sligo, I was in the civil court and tried two special jury cases. Whether the jurors were inferior

Chairman—continued.

ferior or equal to those under the old system, I cannot say; but these Roscommon jurors appeared to be very poor indeed. There was a case of ejectment on notice to quit, and the service of the notice to quit (which was the only point) was not only proved, but admitted. The counsel for the defendant got up and implored the jury to stand between an oppressive landlord and the widow and orphan, and the jury found for the defendant. The judge did everything he could, and almost directed them to find a verdict for the plaintiff, but the jury found a verdict for the defendant, which of course the court set aside. Now, the widow in this case was a lady of very large fortune, with a town house in Merrion-square and a country house and the tyranical and oppressive landlord was the senior member for Roscommon, who thought that he ought to get his lands at the expiration of his tenant's term, but the jury were of a different opinion. Three similar cases were called on before me, and the jury were sworn, but very soon after they were sworn the landlord acceded to the tenant's terms. I cannot say whether he was influenced by the appearance of the jury, but I think it is not improbable. Then, in Castlebar, I occupied nearly the whole of my time with civil bill appeals. My colleague, Judge Morris, told me that he thought the juries were better in Mayo than he expected, but whether they were better than under the old system I cannot say; but when I got to Galway the state of things was truly deplorable. Under the old system Galway was remarkable for the excellence of its juries; they were considered exceedingly intelligent and exceedingly impartial, even in cases involving political and religious feeling. Everyone who knows what Galway jurors were under the old system will know that Galway was sometimes selected as the venue in cases of that kind, in consequence of the reputation of the jurors. When I went there, there was a panel of 265 jurors, and I would say with certainty, that not one-fifth of them were capable of trying any case whatever, civil or criminal; there were some very intelligent men scattered along the panel here and there, and such of those as attended were generally kept in the box to my left hand, while the rank and file were ranged in the gallery facing me, so that I had an opportunity of inspecting them; they were some of them wretchedly poor; some of them had to walk 20 or 30 miles to the town, and then back again (the miles in Galway are long miles); some of them were under the impression that the Crown would pay their expenses as if they were witnesses, and they applied for their expenses; some of them were illiterate; some of them would come up to the bench and ask me to let them go, because they had not the means of paying for a lodging, and I did let them go; we had only one case of felony, so that the rest were misdemeanours, in which there was, of course, no right of challenge on the part of the prisoner. When a case was called on, the Crown solicitor would set aside those that looked very unpromising indeed; any man that would pass muster he would allow to remain; the Crown postponed a good many cases, with the consent of the prisoners, of course. We had a case of sheep stealing, where the prisoner had a right to challenge 20 persons; the scene in court was

Chairman—continued.

lamentable; the men used to be asked to stand up; when a man appeared in the box to the left of me, and was tolerably well clothed, and seemed intelligent, he was immediately challenged; the others were called upon to stand up in the gallery and surveyed by the Crown solicitor, and any of them that looked very unfit for the duty were ordered to stand aside; the result was, that we went through the whole of the 265 names without being able to get a jury, and we then had to go back, and the Crown solicitor had to get in some of the set-asides as they are called; it was a case of sheep stealing, which is not a very popular offence among the farmers; the result was a disagreement, although the case was very clearly proved; that was the state of things that I found in Galway.

2485. Do you think that the jurors serving on that occasion were a fair representation of those on the jury list in Galway?—I have no means of judging; they were returned according to the Act of Parliament, and I should say that there must have been a good many more on the jury list who were equally unfit for the duty; what the state of things has been since that time I do not know, because I have not been that circuit since; I went to the next circuit after the amending Act was passed, which was the Munster Circuit.

2486. Can you tell the Committee anything with regard to the quality of the juries in those places since the amending Act?—No, I never went that circuit since. I went the Munster Circuit in the summer, and I began in Clare. The first case I tried was that of two men, tried for an assault on the police, which had stood over from the previous assizes, in consequence of two others having been acquitted on that occasion. The facts were very simple, and the evidence very plain. Those men had a horse and cart on fair day in Ennis, and for some reason or other they drew the horse and cart right across the road (probably by accident), so as to keep anyone else from going in or out; one policeman took the horse by the head to set him straight, and he and his companions were very severely beaten by the owner of the horse and cart, and some others, who had, no doubt, taken too much whisky at the fair; in the interval of the assizes, the policeman processed those two men before Mr. O'Hagan for the assault; he processed them for 19 *l.* 19 *s.*, the reason for that being that where you process for 20 *l.* or upwards, either party can call in a jury. The policeman obtained damages from the chairman against the men who had been acquitted for assault at the previous assizes. The case came before me, and the counsel dwelling upon the point that the witnesses were policemen, I told the jury that if they believed the witnesses they must convict. The jury appeared to me to be very inferior to what I had seen under the old system; there were some very good men on the panel, but most of those did not answer, and I imposed fines of 20 *l.*; but I do not know whether they were levied. In Limerick we used to have excellent juries under the former system, but in this case they were very inferior indeed. I tried one case, in which the question was the competency of a testator. It related to a farm of seven acres of land, held near Mitchelstown, for the residue of an old life. The length of time which

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the case took was very much disproportioned to the value of the property. I thought the will was very clearly proved. There was no question of the competency of the testator, and I expressed that opinion to the jury. But the jury came out, and the foreman said, "My Lord, we wish you to decide this case yourself." I said, "I cannot give a decision for you." They again retired, and in about an hour they came out, and one of them said, "My Lord, will you let us have a vote for it?" I said, "We are not come to that yet, and I cannot receive a verdict come to like that." I had to discharge them, and I do not know what became of the farm near Mitchelstowu, but I suppose the party was not able to pay the costs of another trial. Another case was an action for trespass brought by an hotel keeper, in which it was proved that the defendants had kept 22 head of cattle, two donkeys, and, perhaps, one goat, grazing on grass land for two weeks in the spring of the year. I told the jury that the only question was, what the compensation should be for the invasion of the land, which was not attempted to be justified. After deliberating they handed me the issue paper, with the words "no damages" written on it. I said, "That is no verdict at all." But they would not agree to find anything, and the man had to go away without a verdict. I do not know what it was in that case, whether it was want of intelligence or what it was, for they could scarcely fail to understand that it was a serious injury to the grass land, but, perhaps, they thought this man, being an hotel keeper, had no right to have land at all. I should say that, on the whole, the jurors in Limerick were very inferior to what I had been accustomed to see, and I had had some experience for many on the Munster Circuit before.

2487. You knew the city and county juries, did you?—Yes.

2488. Were the city juries better than the county juries?—I had nothing to do with the city juries, but I should think that they would be better. I inquired of the sheriff what class of men they were, and he said that some of them were very respectable farmers, having a good interest in the land, but they appeared to me to be men to whom the functions of jurymen ought not to be entrusted.

2489. Can you refer the Committee to any other place where you have had experience of jurymen?—In Cork I have heard that the juries are not as good as we were in the habit of having in Cork, but still I have no fault to find with their verdicts. I sat in the criminal court for two or three days in consequence of Judge Morris having to leave. There were two or three very bad disagreements; two of them I cannot understand at all. One case was a prosecution against a person in the employment of the Excise for obtaining money for licenses under the false representation that he was authorised by the Excise to receive the money. The fact of the representation and the fact of the falsehood were proved by independent witnesses. I saw no question about it, but the counsel told the jury that the man was a very honest man. The jury disagreed, and he was put on his trial again. The second jury disagreed, and there was a third disagreement before me, but I do not remember the particulars of that. Then there was the Home

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Circuit; I went that circuit last spring. In Trim I was in the civil court, principally occupied with Civil Bill appeals; and in Westmeath I was in the Criminal Court, and the state of things were very bad; the jury were quite unfit to try the cases. One was the case of a woman delivered of an illegitimate child in the workhouse; she murdered the child by strangling it. The offence was clearly proved. It was proved that the child was alive and healthy at nine, and at half-past nine, while in bed with the mother, the child was dead, and finger marks were found on its throat. The woman did not deny it; she was asked how it was done, and she said, "No matter how it was done since it is done." Some evidence was given to prove that she was in a state of mind which made her not accountable for her actions, and the governor and the doctor of the gaol testified to that fact. I was in hopes that the jury would act on that, as the woman was of such a low type of intelligence that it would not have been advisable, even in the event of a conviction, to carry out the sentence. I left it to the jury, and they came out with a verdict of "acquittal." I asked, "On the ground of insanity?" Upon which they said, "No; we acquit her of the crime." I inquired what became of her, and I was told that she was taken back to the workhouse that very day, and there she is, I believe, at present in the workhouse, a living example to all the other women in the other workhouses, that if they have a chance of murdering their illegitimate children, they may do so. Another case was almost the converse of that. A son was indicted for the manslaughter of his father. The fact was that he and the old mother, aged 80, and the father were together; the father was knocked down by a blow from a stick, which severely fractured his skull, and he died. The old woman was produced in court, and it was plain she was incapable of doing any injury to anyone, being very feeble, even for her age. I put it to the jury that by the law of logical exhaustion it must have been the prisoner who struck the blow. The old man could not have killed himself, for he could not have given himself such a blow; the old woman was too feeble to do it, therefore it must have been the prisoner. "In addition to that," I said, "you have the confession of the prisoner, drawn up in writing, and signed by himself." The jury were addressed by the counsel for the prisoner, who told them that this confession was dictated by a motive which especially animates the Irish breast, namely, a sense of filial affection, and that he signed this confession to guard his old mother from the consequences of the act. The jury, I suppose, acceded to that view, for they acquitted the prisoner. There terminated my experience of juries in Westmeath: I never was in the county before, and I was never there since; but those were two lamentable instances of failure of justice, arising, I should say, from want of intelligence, for there was no disturbing element of religious or political feeling in either case, and I was very much shocked at the result. I omitted to state, in the Munster Circuit, my experience of Kerry. There is a great deterioration of jurors in Kerry, which was always remarkable for the excellence and intelligence of its jurors. Now, they are very inferior, and there were two instances which greatly disturbed me: one was a case

Chairman—continued.

a case of prosecution against a petty sessions clerk for forgery. There were two convictions before the magistrates for offences against the game laws, and the prosecutor was entitled to half the penalties, and he applied to the petty sessions clerk several times for his half, which did not amount to much, but he was put off with various excuses. This was in February or March. In September he wrote to the Castle, and to his surprise he was told that there were in the Fines Office two receipts for the payments, signed by him. He said that they were forgeries. The law requires that the receipts should be attested by a witness, who must be a policeman. The policeman who was said to be attesting witness in this case was produced before me, and swore that he never saw him sign the receipts, and that he was never there at all. The counsel for the prisoner said he was a man previously of good character, and called on the jury to acquit the prisoner, but they convicted him, and I passed sentence on him; but a day or two afterwards the prisoner's counsel applied to me to remit the sentence, and produced a declaration by the foreman of the jury, in which he said they thought the prisoner acted without any bad faith in the matter, and if they had known what they were about they would have acquitted him. Of course I said, "You must now apply to the Lord Lieutenant." There was another very serious case, which was a case of indecent assault on a child while the family was at mass; the child being at home the man committed the offence, and it was clearly proved; she was a deformed child, and it was a terrible case. The jury, I do not know for what reason, acquitted the man, there being nothing at all to warrant an acquittal. I was greatly shocked, and let fall an involuntary expression that there was no protection for the children of the poor; I did not intend that to be heard, but the reporters heard it and it got into the papers. But I was very much shocked, and such offences have lately become rather more frequent than they were in Ireland. So my experience in Kerry was very unfavourable. That was this time 12 months. In other counties, on the Home Circuit, I did not find any failure of justice; but in Queen's County the juries were not of a very high class, although I had no fault to find with their verdicts. In Carlow I was in the civil court, and I only tried two special jury cases. In Kildare, where there was a great deal to do, and the criminal business occupied five days, the juries seemed to me to be very good; they did their duty very well. I could not desire better juries; so that on the Home Circuit there was but one county in which I could say there was any failure of justice by reason of the composition of the jury.

2490. Were you acquainted with those circuits before the passing of Lord O'Hagan's Act?—I knew the Connaught Circuit very well. I never was on the Home Circuit before; the senior judges choose that circuit, it being an easy circuit. But I have had very long experience of the Munster Circuit, having practised there for 25 years.

2491. And ever since the Amending Act you think that the jurors on the Munster Circuit were very much worse than they were under the old system?—I think so.

2492. Can you make any suggestions to the Committee for improving the law?—If I were to make any suggestion it would be to return to the old system; that would be my view; but in the present state of affairs, considering that the power of selection by the sheriff has been abolished by the Legislature, it would be very difficult, if not impossible, to restore it. But supposing for a moment that it were restored, it struck me that there might be this check, that is to say, that the sheriff should be compelled to return the panel for one assizes before the other; that is to say, he should be compelled to return the panel for the Spring Assizes before the Summer Assizes, when he could not know by any possibility what cases would be tried. But this has been a leap in the dark, and I fancy it is irrevocable, like other leaps in the dark; it is often hard for those who take leaps in the dark to get back again. The change would be very strongly opposed I have no doubt. My own opinion is, however, that the law should be the same in Ireland as it is in England. I do not think there is any reason for making a distinction; but I see a very strong body of opinion the other way, and I have had but a very limited experience.

2493. Has your attention been drawn to the proposed Jury Bill before Parliament with regard to England?—I saw with great regret, that two changes, which I would very strongly advocate, have been rejected; one is reducing the number of jurors in civil cases to six, which I think would be a very great improvement, and would diminish the chances of disagreement. It would also diminish the pressure on the jurors' time, and I wonder the jurors themselves do not agitate for it; but I suppose they are a helpless body. I think the cases would be just as well tried by six as by twelve, and I see no reason for having twelve. In Dublin, if I had six men when I am sitting in *nisi prius*, I would get through the business very much faster, because sometimes days are lost in attempting to collect twelve men together. Now in Dublin there are five *nisi prius* courts sitting, and there will be six sitting when I go back, in addition to the Probate Court and the Commission Court, so that there will be 72 jurors empanelled in nisi prius cases, besides those who are waiting as a reserve, which is a terrible tax on Dublin. The other thing which I would advocate is extending the limit for service from 60 to 65 years of age. I see no reason for exempting jurors at 60 years of age if they have no other malady than being 60 years old; it is a very serious one no doubt, but most of the judges are over 60, and I must plead guilty myself; I believe that a great many Ministers of the Crown, both of the late Government and the present Government, are over 60 years of age. I never heard it alleged, even by their opponents, that the members of the Cabinet ought to be removed from office because they were over 60 years of age. By exempting jurors at 60, you lose a very good class of jurymen, who have had much experience, and whose passions are softened by age. There is no reason on earth why a man of 60 or 62 should not sit in the jury box for six hours a day to listen to evidence and to try the case.

Sir *C. O'Loghlen.*

2494. Would you propose to fix any limit?—I would say 65 years of age.

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2495. Were any complaints made at the two last circuits that you told us of by the jury of the over frequency of the summonses?—I think that occurs more in Dublin; it has occurred in Dublin. I have heard complaints of the same thing frequently; the sub-sheriff said that he was compelled by law to do so. I have had applications from men on whom the service pressed very severely, men depending for support on daily labour, who said they would lose their employment. There was one case of a music teacher, who said, "If I cannot attend my pupils to-day and to-morrow I lose them." Then there are clerks in offices who say, "Our master's business cannot go on without us, and we shall be sent away." In that way the Act, with its mechanical stringency, acts with great severity in some cases; but whether that is counterbalanced by the public benefit which is said to arise, I cannot tell.

2496. But you have the power of excusing those persons, have you not?—Yes, and I do excuse them; but there is a great pressure on the juries in Dublin, where a great many juries are required; the pressure on the Dublin city juries is really very severe, in consequence of the division of the venues into county and city the county jurors always escape. Nobody ever lays a venue in the county except in ejectment cases. Now, the pressure would be very much diminished if the distinction between the county and city of Dublin were abolished; I suggested that to Lord O'Hagan as an improvement, but perhaps he thought it was beyond their power; but it would be a good thing to mix the city and county jurors, and it would bring in a large class of men who are among the best jurors in the county, but who now escape.

2497. Would that apply to other counties besides Dublin; would it apply to Limerick, for example?—Yes, certainly, I think it would; in Belfast and Derry it is the case. The merchants there serve on one panel for the county of Antrim. The juries there are very good, and the town gentlemen do not object, I believe, to being on the county panel. At one time they were exempted, but since the law has been altered they are, all of them, now put into the county panel, and there is only one venue, or panel, for the whole of the county of Antrim, including, as it does, the great town and city of Belfast. It is the same in Londonderry, and I do not see why it should not be the case in Dublin, Cork, and Limerick; and then, at Galway, Kilkenny, Drogheda, and Carrick Fergus, the distinction of the local venues ought to be abolished, certainly; but I would extend it to all places; I think that a mixture of the county and the city jurors would be useful, because the farmers in the county would be influenced by the city men with whom they are in the habit of dealing, whereas they regard the county gentlemen with some jealousy as landlords, perhaps.

2498. Were there many cases of non-attendance upon summonses?—A great many of the better class stayed away; they do not like mixing with the others; that is the reason.

2499. Were many fines inflicted?—I always inflicted fines on them; but whether they were levied or not I do not know. In Clare I fined them 20*l.* a piece; but some of those who were named on the list were absent from the country. Some of them go away to avoid service. There is a greater disinclination, I think, on the part of that class of jurors to serve on juries than there was formerly.

Chairman—continued.

2500. Have you anything to tell the Committee with regard to the composition of special juries?—I did not observe any serious lowering of the quality of those juries, but I had only one special jury case in Limerick, and they were very good indeed; they could not be better.

2501. Is there any other suggestion which you wish to make to the Committee?—There was one very small suggestion which is, that I would repeal that clause which requires jurors to be called three times, which involves an enormous waste of time at the assizes.

Sir *C. O'Loghlen.*

2502. Is it not the case that the judges differ on that subject. Mr. Justice Fitzgerald ruled at the last assizes that you need not call the jury over three times, and Mr. Justice Barry ruled the contrary; was not that so?—That would be an additional reason for altering the law. Another suggestion I would make, which is, to alter the complexity of this clause about tales-men, which Mr. Monaghan called my attention to. It is so complicated at present that it is almost impossible to comply practically with the provisions of the Act of Parliament. I see no reason for making a change in the old practice, except that somebody wished to have a change.

2503. I presume that you would give the same right of challenging the array in misdemeanours as in felonies?—Yes, certainly; there is no reason for the distinction between misdemeanours and felonies in that respect. A man may challenge the array for sheep-stealing, whereas if it is a case of assault for which he can be sentenced to seven years' penal servitude, he cannot challenge at all.

Mr. *Downing.*

2504. I believe that you never practice at the criminal side of the court?—No, except when I had the conduct of the Crown prosecutions.

2505. Are you aware that Mr. Hempill, the Chairman of Kerry, was examined before this Committee?—Yes.

2506. Are you aware that he gave his opinion that under Lord O'Hagan's Act the verdicts of the juries were most satisfactory?—I did not read his evidence, but I believe he did say so.

2507. If he did say so, you will admit, will you not, that he has had great experience?—Yes; Mr. Hempill is a person whose opinion is entitled to the greatest respect. I am also aware that Mr. Serjeant Armstrong, who has had more opportunities of judging than I have, has come to a very different conclusion from mine.

2508. You are aware, are you not, that two-thirds of the criminal cases in Ireland are tried at the court of quarter sessions?—Yes, and perhaps more than that.

2509. You know Mr. Johnson, I suppose, the sub-sheriff of Cork?—Yes, very well.

2510. He has held that position for a great many years, has he not?—Yes.

2511. In fact, we may call him the permanent sheriff of the county?—Yes; as long as I can remember, either he or one of his sons has held the office.

2512. He

Mr. *Downing*—continued.

2512. He was asked at Question 786, "With regard to the operation of the Acts of Parliament since the amended Act was passed, are you, as sub-sheriff, satisfied with it?" and he replied, "I think it has many advantages; first of all, it has taken off a very large proportion of the ignorant and illiterate jurors, which has saved the judges at assizes much trouble;" (*Q.*) "Who were the judges at the last assizes in Cork?" (that is to say the Spring Assizes of last year) and he says, "Judge Barry and Judge Fitzgerald:" Then he was asked, "Did you hear them both congratulate the jurors on their conduct and their verdicts?" and he replied, "Yes, certainly;" that shows an improvement, does it not, at the last assizes?—Yes.

2513. Do you think that the old system was better than the present system?—Yes.

2514. That is to say, under Perrin's Act?—Yes; the system which gave the power of selection to the sheriff, I think, was better than the present system; but I know there is a great body of opinion the other way.

2515. Do you not find that when a new Act of Parliament comes into operation, it is always found difficult to work it for some time?—Yes; we had had experience of that before the passing of Lord O'Hagan's Act.

2516. Are you aware that under Lord O'Hagan's Act, a great many gentlemen of the county refuse to attend?—Yes; no doubt.

2517. Because they think they ought not to be classed with the farmers of the county?—It has increased their disinclination to serve.

2518. That would account for the array of poor men that appear in the jury box, would it not?—That did not occur in Galway.

2519. But it did occur in Clare?—Yes; several of those whom I knew personally were absent.

2520. After the passing of Perrin's Act, there was a Committee appointed, exactly such as this, to inquire into the effects of that Act, was there not?—I was not aware of that.

2521. Let me call your attention to a question put before that very Committee, as to the working of an Act which you consider is better than this?—No, I do not say that, but merely that it is better that there should be a power of selection than that the thing should be done mechanically.

2522. Now, Major Warburton, in his evidence before the Select Committee on the State of Ireland, said, "The year after the 3rd & 4th of Wilham the Fourth was passed, seven or eight men came to me with a petition to hand to the judge; they said, 'We are brought here as jurors; we literally are starving; we have no means of providing ourselves; we have come 40 miles.' I found, out of the seven, there were four who could not speak English, and the other three were illiterate."

2523. Have you found anything as bad as that under Lord O'Hagan's Act?—Very nearly.

2524. Were you presented with any memorial to say that the jurymen were starving?—No, I have had no memorials; but they have asked me to let them go home on account of poverty.

2525. Have you not found it generally the case at the assizes, that one or two or three men will represent to the judge that he is really so poor that he cannot stay?—I do not remember.

2526. A question was put upon the same Committee to Mr. Kemmiss, Crown Solicitor, and he

Mr. *Downing*—continued.

said, "I have known persons returned to serve who were absolutely illiterate"?—Yes, I dare say.

2527. Then Mr. Seed said, of whom you have also heard, "I have seen cases where the jurors could not read or write; some of them were very ignorant men." That was a very bad state of things, was it not?—Yes.

2528. Now I will ask you to hear about the jurors in Sligo?—I did not say anything about the jurors in Sligo.

2529. Mr. Fausset, one of the magistrates of Sligo, was examined before the same Committee, and he said, "For the last few years" (that was during the period in which the Act was in operation) "the petty jurors were of a lower class; not the same description of persons as formerly; many of them very illiterate; could not either read or write." He is further asked, and he says, "There were 83 indictments found at the last Sligo Assizes, and the number of convictions were, I believe, not more than six or seven." That is very much worse than anything you have found since the passing of Lord O'Hagan's Act, I suppose?—It is.

2530. Then he says, "I recollect Mr. Dudgeon, the Crown Solicitor, stating to me he thought it was useless to go to the expense of having assizes in Sligo;" he also says, "In Sligo, in 1838, the number of persons committed was 224, indicted, 155, and convicted, only 20; the small number of convictions was attributable, probably, to the formation of the juries;" then we have Mr. Rowan, a resident magistrate, who says, "I am very sorry to say the recent Jury Act has put a class of persons on the panel, many of whom are likely to be Ribbonmen;" now, that was under Perrin's Act, and that was a very lamentable state of things, was it not?—Yes, no doubt.

2531. Now, with regard to returning to the old system, would you propose to give the sub-sheriff the power of selection?—The same power that he had before the Act was passed.

2532. Are you not aware that there were great complaints of the way in which that power was exercised by the sub-sheriffs in Ireland?—No, I am not aware of it; I remember no complaints in the Munster Circuit.

2533. Were there no complaints in the north of Ireland?—I have heard of complaints in the north of Ireland, but I never had any complaints when I was a judge myself.

2534. But if there was a just cause of complaint, it would require remedying in the north just as if it occurred in the south, would it not?—Of course.

2535. Are you aware that Mr. Serjeant Armstrong was examined here a few days ago, and that he stated that out of 1,050 cases, he having analysed the whole of the verdicts, there were only four per cent. in which there was disagreement?—I suppose he did say so; I know he gave very strong evidence; he is a very high authority, and he has had much more experience of jurors than I have, but I do not agree with him.

2536. He further stated that there were only two per cent. of the whole in which the judges set aside the verdicts as being found against the weight of evidence; were you aware of that?—I did not know that.

2537. If

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Mr. *Downing*—continued.

2537. If that is so, is not it a very strong fact in favour of the verdicts being correctly given?—Yes, but it is very difficult to set aside verdicts in civil cases. The power is very rarely exercised, unless it is a very flagrant case indeed; but I have no means of knowing that the figures are correct, or where Mr. Serjeant Armstrong obtained them from.

2538. I suppose you would not propose to do away with trial by jury?—Certainly not; on the contrary, I think it would be a great evil if there was any interference with it.

2539. You would not have the juries always return verdicts in accordance with the opinion of the judges?—Certainly not; I have sometimes differed with juries, but I have come round to the conclusion, after all, that they took a more common sense view of the case than I did.

2540. I suppose a trial for perjury is one of those cases in which the jury would be likely to differ?—It depends on the nature of the circumstances.

2541. They must first find that the evidence was false, and then that it was corrupt?—Yes, that last point is an additional element in the prisoner's favour, of course.

2542. You spoke of a case in which the jury agreed to a verdict with no damages?—That was an action for trespass in Limerick.

2543. What was the verdict in that case?—None at all; they did not find a verdict; they sent in to me on the issue paper, "No damages."

2544. Did you see in the newspapers, within the last 10 days, that there was a verdict found by a jury in Scotland, "Guilty, without culpability"?—Yes; I never thought the Scotch juries were infallible.

2545. And the judge refused to take the verdict, did he not?—Yes.

2546. Then the jury went back and found a verdict of not proven?—Yes; I have heard of wrong verdicts being given everywhere.

2547. You do not suppose that verdicts in Ireland are any exception to the general rule?—No, not at all.

Mr. *Bruen.*

2548. Those "lamentable" cases to which Mr. Downing has referred in Mr. Warburton's evidence, Mr. Fausset's evidence, Mr. Dudgeon's, and Mr. Rowan's evidence, were cases which occurred under the old Act of Parliament, and probably because the sheriff did not exercise his power of discretion in framing the panels?—I suppose so; but I was not called to the bar at that time.

2549. But the weight of probabilty is, that as the sheriff had the power of selecting the jury panels, if both Ribbonmen and incompetent persons found their way on to the panels, it was the sheriff's fault?—Yes, I should say so, as he had the power of selection under the law as it then stood.

2550. With regard to Mr. Serjeant Armstrong's evidence, although the per-centage of applications for new trials is small, I suppose that if a person who wished to have a new trial succeeded in his application, the trial would be tried by a jury, would it not?—Certainly.

2551. It is not very likely that a person who found a jury to have given a wrong verdict, would try his case again by exactly the same tribunal, is it?—If he tried it at all again, it should be by another jury, of course. But a court very seldom sets aside a verdict as against the weight of evidence; it requires a very strong case indeed to induce them to do that; if there was any evidence to go to the jury the court usually sustain their verdict.

Mr. *Bruen*—continued.

2552. Mr. Serjeant Armstrong also stated that out of his 1,050 cases, 580 were tried in Dublin; now in Dublin the juries under the new Act have been pretty good, have they not?—Yes; so far as I have had experience, they are certainly better in the city. I do not know much of the county, but I think they are better than they were under the former system; most of the *nisi prius* business in Ireland is done in Dublin now.

2553. Is it a fact that more cases are brought to be tried in Dublin now, than there were before the alteration of the law in 1871?—No; not more since the alteration of the law in 1871, but since the Common Law Procedure Act of 1852, by which the plaintiff has the power of laying the venue in any county; the great majority of cases are laid in Dublin, and then, unless the defendant can make out a strong case for a local venue, it is tried there. The consequence is that almost all the *nisi prius* business in Ireland is transacted by Dublin juries.

2554. In your experience as a going judge of assize, I suppose you find the power of the Crown to set aside jurors has been a great deal more frequently exercised since the passing of Lord O'Hagan's Act than it was before?—It has.

2555. Do you think it is desirable that that power should be exercised to a very great extent?—I think it is desirable that the power should continue to be vested in the Crown prosecutor, and it should be exercised according to sound discretion, and I believe generally it is so; I never saw it abused that I know of; I never knew, except in this case in Galway, 20 set aside; but I believe that such cases have occurred in Dublin; I heard that in the Montgomery case, in Tyrone, 100 jurymen were ordered to stand aside. I know that in cases in Green-street, in a particular class of cases, a great number of jurymen have been set aside, and that amounts practically to a power of selection being vested in the Crown solicitor instead of the sheriff.

2556. In fact, you are of opinion that a power of selection must be vested in some officer?—That is my opinion, but I know that very high authorities differ from me.

Mr. *Verner.*

2557. Do I understand you rightly to say that you are in favour of having one sheriff for counties and counties of cities?—I am in favour of having one jury panel, but I say nothing about the sheriff.

2558. You are not in favour of having one sheriff, are you?—I have formed no opinion on that point; I think the jury panel should be returned by the county sheriff, and that there should be only one.

Mr. *Plunket.*

2559. In case there was still to be separate juries for counties and cities, such as the county and city of Dublin, do you think it would be wise to leave

Mr. *Plunket*—continued.

leave the power of selection in the hands of the sheriff of cities, suppose the sheriff ceased to be appointed by the Crown and became an officer appointed by the city?—I do not think that you could draw a distinction if you gave a separate panel; if you gave the power to the county sheriff I do not see how you could draw the distinction. I think there should be one law both for the county and the city, whatever it is.

Sir *C. O'Loghlen*.

2560. I believe you have expressed the opinion that there ought to be only one venue, and that the distinction between the county and the City of Dublin should be abolished?—Yes.

2561. You consider that that would be an advantage, both to the jurors and the public?—Yes, both to the jurors and the public; it would relieve, in Dublin, one class of jurors from a pressure of very undue severity; I said that to the gentlemen who were drafting the Bill for Lord O'Hagan, but they do not appear to have thought it right.

2562. You would apply the same principle to Limerick, Cork, and other places, I think you said, so as to mix the juries?—Yes.

2563. You spoke of several extraordinary verdicts since the passing of Lord O'Hagan's Act, particularly in the first assizes that you went to, and the disagreement of juries; was it not very common before the passing of Lord O'Hagan's Act, to have extraordinary verdicts and disagreements?—Yes, there had been extraordinary verdicts and disagreements, and there will be under any system, but I never, myself, heard of such instances of striking failure of justice, as those which I have mentioned.

2564. Did you prosecute in the Blarney murder case?—No.

2565. There was an acquittal there, I think?—I do not remember it; it is such a very long time ago; you were more responsible for it than I was.

2566. You have no experience of Welsh jurors, or the verdicts of Welsh jurors, I suppose?—No; and I hope I never shall have that experience.

2567. You spoke about that unfortunate child-murder case; is it not the fact that in consequence of the law of capital punishment in those cases, you find great difficulty in obtaining convictions?—No doubt the fact of the law of capital punishment, does make juries more unwilling to convict in such cases; but, in this case, they might have relieved themselves by acquitting on the ground of insanity.

2568. But in child-murder cases you do find a difficulty in obtaining a conviction for murder?—Yes.

2569. And that may be some explanation?—Yes.

2570. Was the other case in Westmeath also a capital case?—No, it was an indictment for manslaughter, and it was not a very aggravated case at all; it was a quarrel, and the son was under the influence of drink.

2571. You stated that your wish would be to restore to the sub-sheriff, or some one, the power of making the selection?—Yes.

2572. Did I understand you to say that you do not think public opinion in Ireland would sanction the change?—I do not profess to be a judge of public opinion, but I say that it would be strongly opposed.

2573. At all events, you admit that there would be great objection in Ireland to recurring to the old system of selection?—Yes; I think it would be strongly opposed; I do not think that the Attorney General would have a happy time in the House of Commons; but that is his business

2574. Before the passing of the recent Act of Parliament, had you heard complaints of the packing of juries by the sub-sheriffs in Dublin?—Yes, I heard something about it in Dublin.

2575. Do you recollect the time when the case of the Queen *v.* O'Connell?—Yes, the Queen *v.* O'Connell panel was not arrayed by the sheriff; it was a special jury panel struck under the old system; the sheriff under the old system returned 48 names to the Master of the Court of Queen's Bench, and each party came before the master and struck off 12.

Mr. *Downing*.

2576. Was it a case?—Yes.

2577. Do you not remember in the panel returned by the recorder that there were two whole pages taken out of the return?—Yes, I remember that fact.

2578. The sheriff, or some one did it, I suppose?—Some one did it, no doubt; but what occurred was this; when it was known that Mr. O'Connell and others were to be tried, Mr. Pearse Mahoney, who was solicitor for Mr. O'Connell got up a move among the liberal party to attend Green-street and get put on the jury; that got wind among the other side, who got up a counteracting movement, and attended in much larger numbers; the consequence was, that there were fewer liberal names on the jurors' book than there were when the panel was first settled (and I suppose you all remember Lord Denman's phrase, a mockery, a delusion, and a snare).

Sir *C. O'Loghlen*.

2579. Have you heard complaints before the passing of Lord O'Hagan's Act, about the packing juries in Dublin?—Yes.

2580. But not on circuit?—No.

2581. Have you heard of bribes being given to the clerk in the office?—No; but I have heard of individual jurors paying not to be served, or paying to be served.

2582. Now with regard to fines, would you remit the amount of the fine; is it politic, do you think, to impose large fines, and not enforce them?—It would be much better to impose a fine which was certain to be enforced; but the fine seldom exceeds 5 *l.*

2583. Your desire would be to have a certain moderate fine, and that that fine should be imposed and enforced?—Yes.

2584. Now with regard to challenges; at present, you know, that the prisoner can only challenge in a case of felony?—Just so.

2585. Do you think that the power to challenge 20 is too large a power?—No, I do not think it is too large.

2586. And I think you say you would propose to give the same right in cases of misdemeanour?—I see

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Sir *C. O'Loghlen*—continued.

—I see no reason for the distinction; in fact, the whole distinction appears quite irrational.

2587. In the English Bill there is a limited power of challenge in civil cases; three or four on each side; what do you say to that power?—I see no objection to it; but in civil cases, if either party has any objection to a juror, and if it is considered at all reasonable, the gentleman is always asked to withdraw.

2588. But you think there is no objection to giving a power of limited challenge in civil cases?—None.

2589. Have you known the right of the Crown to order jurors to stand aside abused?—I never saw it carried out to any great extent.

2590. Have you heard it complained of to any great extent in Dublin?—No, I have not.

2591. Is that so in political trials in Dublin?—In the only political trial that I was on lately it was exercised to a very considerable extent; that was the case of the man who was tried for shooting in North George-street.

2592. Do you think that there should be a power of giving special jurors in criminal cases?—Yes; I think it would be useful.

2593. That is to say, that either party might apply to the judge for a special jury?—I would rather the power were to apply to the court rather than to the judge.

2594. But that power cannot be given until a true bill is found, can it?—The provision might be framed so as to give the power to the court. I prefer the application being made to the court, as it is now. The law might be altered, so as to make that possible in case a change was made.

Marquis of *Hartington.*

2595. I understand you to say that you are in favour of giving a power of selection to some officer?—Yes.

2596. Can you suggest any one besides the sheriff?—No, I cannot. The power by law was vested in the high sheriff, but very often he delegated it to the sub-sheriff, and he is not appointed by the Crown.

2597. Then practically, if your suggestion were adopted, it would amount to reverting to the old system?—Very much so. I mentioned a proviso which I would suggest in case it should be done (which I do not anticipate), namely, that whoever had the power of selection should be required to return the panel for one assizes before the other; that is to say, the panel for the next spring assizes before the coming summer assizes; and then I would say, let anyone have the power of applying to the judge, and of assize, that thought proper to apply respecting it. That would obviate to a great extent one objection; namely, that the panels may be averaged for particular cases or particular party purposes, because then the sheriff could not know what cases were coming on.

2598. Would you not prefer some system by which all objectionable names should be previously removed from the jury book?—Yes, I would certainly; but I can suggest no such system.

2599. If sufficient power were given to the local magistrates, would they not do it?—I think that would be more objected to than the power

Marquis of *Hartington*—continued.

of selection by the sheriff; I mean it would be more objected to by those who objected to the old system of selection by the sheriff.

2600. Is it not the most objectionable form of selection that some individual should have the power of selecting the panel for particular trials?—In the way I suggest he would not have that power, because the panel would be arranged before he could possibly know what cases were going to be tried; I would require him to publish also in the county papers the panel that were to be taken for the next assizes, and that would be a another check upon him.

Mr. *Downing.*

2601. Do you not think that the revision of the jurors' list before the chairman and the magistrates at the court of quarter sessions would be an admirable system of revision?—I think it would be better than the present system; the chairman has not sufficient knowledge of the people.

2602. Is there not much more confidence placed by the people in the chairman of the court of quarter sessions, than in the local magistrates sitting in petty sessions?—Yes, I think so.

2603. Then you would rather approve of the chairman of the court of quarter sessions and the magistrates revising the list than giving it to the magistrates sitting in petty sessions, I suppose?—Yes.

Sir *C. O'Loghlen.*

2604. Do you see any objection to having the jurors selected by ballot in civil cases just as in criminal cases, so as to get rid of canvassing as far as possible?—I see no objection to that.

Mr. *Bruen.*

2605. With reference to the revision of the list before the local magistrates, do you think that any harm could accrue if after that revision by the local magistrates the list was submitted to the chairman of the court of quarter sessions, and then that all persons concerned should have the power to come before the chairman of the court of quarter sessions and object to the list, or ask to be put on it?—I do not think that that power would be much exercised; people would not be anxious to be put on the list; I would rather leave it with the chairman and the magistrates in quarter sessions who possess local knowledge that, of course, the chairmen by themselves cannot possess.

2606. But that depends on the fact whether those magistrates attend or not at the court of quarter sessions, does it not?—Yes.

2607. And the fact of their not having attended previously under the old system would perhaps throw a doubt on that, would it not?—Perhaps so.

2608. The complaint made formerly was, that the magistrates did not attend on those occasions to revise the list; therefore, it is not improbable that they might not attend with the chairman of the court of quarter sessions for that purpose, is it?—I do not know; I should be disposed to think that they would attend, but of course you cannot compel them to do so.

Marquis

Marquis of *Hartington.*

2609. You are apparently not of the opinion that any revision by the chairman and justices, or any other revision that could he devised, would give you a jury hook from which you could select indiscriminately?—I think it would be hetter even then to have some power of selection, hut a revision of that kind would of course diminish the objections which have heen made to the present system, because you might then get rid, in part, of a certain class of persons whom I have referred to.

2610. If you revert to the old power of selection, it is with the object of leaving out altogether from the jury panel certain names?—Yes, the names of persons who are unfit to serve.

2611. Would it not he hetter, if possihle, to get rid of those uames from the jury book?—Yes; but I do not see how a revision could be made so exhaustive as to make it advisable to dispense with the power of selection.

2612. But does not this system of selection really and practically make the sheriff or sub-sheriff a court of appeal from the revising authority?—It gives him the power of selecting from the revised list such jurors as he thinks proper.

2613. That is to say, after the justice, or whoever may be the revising authortty, have left the names on the list, it is in the power of the sheriff to say; "that man shall not serve on the jury, because I think he is unfit"?—No doubt.

2614. Is not that a very invidious power?—No, I think it is not an invidious power; you have very large panels in counties, and it is not invidious, in my opinion, to say that some men shall be off it and some men shall be on it.

2615. But why should the sub-sheriff be a hetter judge than the chairman and justices?—I think he very often knows a great deal about the men on the panel that may not have come hefore the chairman and the justices.

Mr. *Downing.*

2616. On the other hand he may be a stranger, may he not?—Yes; he may be a stranger, hut practically it is the same man that serves for a succession of years, as we all know.

Marquis of *Hartington.*

2617. Might you not just as well give the sheriff the power of striking the names at once off the jury book?—No; I think not.

2618. What is the differeuce hetween striking the names off the jury hook, and making up your mind that you will never put them on the panel?—There is not much difference if you make up your mind that you will never put them on the panel; but the sub-sheriff may have information which is not before the justices.

Marquis of *Hartington*—continued.

Sir *C. O'Loghlen.*

2619. In criminal cases, the Crown Solicitor could act on that information according to the old system of special jurors, but the sheriff had nothing to do with the election of the panel at all; there was one revision from which the juries were taken hy hallot, was not that so?—No; he returned 48 names.

2620. Did not the officers draw them by ballot, each one striking off 12 or 24 when returned, while the sheriff had no power of election when once you had made a good panel?—I am not clear about that.

Sir *A. Guinness.*

2621. Would you have the same confidence in the selection of jurors hy sheriffs who were not appointed by the Crown?—I do not see how any distinction could he made between one sheriff and another. If the power of selection is to be vested in the sheriff in counties, it ought for a similar reason to be vested in the sheriffs in towns; you could not draw any tenable distinction. The sheriffs of counties at present are not nominared by the Crown, although they are appointed hy the Crown. It is generally the first of the three on the list that the judges send in, who is appointed to serve.

2622. But the Crown has the power of selection, has it not?—Yes, it has that power, hut they invariably go in the order of the names, unless some party can give a valid excuse for doing otherwise.

Mr. *Mulholland.*

2623. Your object in wishing the power of selection to remain with the sheriff is to get more intelligent jurors, is it not?—Yes.

2624. Your meaning in some of the answers you have given on this point was, that that particular point of intelligence was not a thing that could he tested before the magistrates on the revision there?—Yes.

2625. Therefore you think that it requires that a power of selection should be left in other hands?—Yes, certainly.

Mr. John Ball Greene, called in; and Examined.

Mr. *Greene.*

Mr. *Bruen.*

2626. You are First Commissioner of Valuation, I think, in Ireland?—I am.

2627. Will you be kind enough to refer to the first schedule of the Juries Act, the amended Act of 1873. In that Act the qualification for jurors is stated to be in certain counties, "A net annual value of 30*l.* or upwards, in respect of lands, tenements, or hereditaments, within any of the said counties, or a net annual value of 12*l.* or upwards, in respect of lands, tenements, or hereditaments, appearing on the rate book of any union to be situate in any city, town, or village, within any of the said counties"?—Yes.

Mr. *Bruen*—continued.

2628. The rate hook is copied from the valuation list, is it not?—Yes.

2629. Will you he kind enough to inform the Committee what other rules whereby you decide that houses should be called villages in certain cases, and while in other cases they are not called villages?—Practically, we have not drawn any hard and fast line as to the difference hetween a town and a village, bnt, for convenience, we have classed

Mr. *Greene.*

15 June 1874.

Mr. *Bruen*—continued.

classed towns down to about 500 in population. In the case of very small villages we do not class them formally as villages, but we include them in the town land. It is only when it becomes necessary to make an enlargement of the map to distinguish by letter, and define the houses, that we insert in the valuation list the word village.

2630. Anything over 500 in population is said to be a town?—Yes.

2631. But anything below that is a village?—Yes; provided it is necessary to make a large map of it.

2632. But that is the only distinction between a village and a collection of houses, which is not called a village?—Yes; there is a published return of the area of population down to 400 in Ireland; in fact, from 500 inhabitants upwards everything is a town.

2633. You will observe in that Act of Parliament that the lands, tenements, or hereditaments must be situated within a city, town, or village; how do you define the boundaries of a village?—We define the boundaries of a village when it is enlarged. Whatever can be represented on a six-inch map we exclude as not a village; and whatever makes necessary a large map on a 60-inch scale, we account it as the boundary of a village.

2634. In fact, it depends on the size of the map?—Yes, it depends on the size of the map. We do it on for convenience. We must identify the houses by letters and by number. When the houses become too close for doing that on the small map we make an enlargement, and call it a village.

2635. Who is it that judges when the houses come too close?—When on a six-inch map the valuer cannot put them down, I mean when they are so close that he cannot put the letters or numbers on the houses.

2636. Can you give the Committee any idea what number of houses in general compose a village under that rule?—It ranges, I suppose, from about 30 up to 60 houses.

2637. And what quantity of land would be comprised on a 10-inch scale map which shows the bounds?—They would be very little. Of course the inhabitants of villages in Ireland do generally occupy land, but that would not be included.

2638. The qualification for special jurors in the second schedule refers to the county of Dublin, and in that it appears that the qualification for special jurors is, "A net annual value of 150 *l.* or upwards in respect of lands, tenements, or hereditaments, within any of the said counties, or a net annual value of 50 *l.* or upwards in respect of lands, tenements, or hereditaments appearing on the rate book of any union to be situate in any city, town, or village within any of the said counties." Now within your own knowledge, does that qualification exclude from the list of special jurors many men in the rural parts of the county of Dublin who are very well fit to be on a jury?—Undoubtedly it excludes a vast number, particularly in my own neighbourhood where there are great men of superior intelligence and education, and in the neighbourhood of Belfast it is the same; they pay 100 *l.* or 200 *l.* average rent there.

Mr. *Bruen*—continued.

2639. But those men at present are excluded?—Yes.

2640. They are on the common jury list, but not on the special jury list?—Just so.

2641. You find that in the county of Dublin there are men whose valuation amounts to 150 *l.*, and upwards, who are far from being of the character, education, and competency, which would fit them to be special jurors?—Yes, I should say on the north side of Dublin, particularly among the class of dairy farmers, and their holdings would be very large, 150 *l.* or 200 *l.* a year, but they are not nearly so competent for special jurors as the class of men who live in Killiney, Kingstown, and other suburbs of Dublin.

2642. Could you suggest to the Committee any addition or alteration in the qualification by which those well qualified men could be put on the list?—Yes, I could suggest the schedule including all those townships, such as Kingstown, and so let them come in under the qualification of 50 *l.*; there are fixed boundaries to all those townships settled by Act of Parliament, and also in the neighbourhood of Belfast.

2643. That would have the effect of giving a qualification for special jurors to those gentlemen who are now excluded, but who are perfectly fit to serve, would it not?—Certainly.

Mr. *Verner.*

2644. Would you include Cork in that provision for bringing in the people of the surrounding districts?—Yes; Passage and Monkstown, and all that I would certainly include, I know the localities very well; I know there are gentlemen of intelligence there who occupy handsome villas around Cork.

2645. You think that they would come under the same head?—Certainly.

Mr. Charles Kernan, called in; and Examined.

Mr. *Kernan.*

Sir *C. O'Loghlen.*

2646. Are you Clerk of the Peace for the City of Dublin?—Yes.

2647. How long have you held that position?—Fourteen years.

2648. I believe that you have been for a very long time practising as a solicitor in Dublin?—For 40 years.

2649. Have you held the office of sub-sheriff?—Yes.

2650. In what place?—In Monaghan.

Sir *C. O'Loghlen*—continued.

2651. I need hardly ask you if you have had a great deal of experience in the working of the jury system?—Yes, a good deal.

2652. Before Lord O'Hagan's Act, was any complaint made of the mode in which the sheriffs, or rather the sub-sheriffs, exercised their duties in Dublin?—There was; it was a constant source of complaint in Dublin; every party was dissatisfied with the mode in which it was done, for various reasons.

2653. In

Sir *C. O'Loghlen*—continued.

2653. In fact, do you know from your own experience in Dublin if it was the sheriffs or sub-sheriffs' clerks who used to settle the panels in the olden time?—I knew something about the sheriff's office some years ago, and I knew it was the clerk, or summons server, who, in fact, made out the jury panels in ordinary cases; of course if there was any extraordinary case the sub-sheriff himself would see to it.

2654. But in ordinary cases the summons server did it?—Yes.

2655. Was it a source of profit to them in leaving out names or putting names on?—Yes, no doubt; I have been told by many persons that they have paid money to be left off the panel. Only last Saturday I met a gentleman, who told me that it cost him him 10*s.* every year to be left off the panel.

2656. Do you attend the recorder's court as the registrar of that court?—Yes, we sit generally every month.

2657. Now, with regard to the character of the jurors, have you found any improvement in that court?—Yes, we have found very considerable improvement in the petty juries.

2658. Now in the superior courts of law, can you give the Committee any opinion, from your own knowledge of the working of the jury system?—Certainly, from observation and knowing the juries; you have got rid of the professional jurors, commonly called guinea pigs, which were a great nuisance to the profession and to the respectable jurymen, who did not like sitting with them.

2659. You think that now the panels for common juries in the city of Dublin are greatly improved, do you?—Yes, greatly improved.

2660. Have you formed any opinion as to whether you would amalgamate the Dublin county venue with the Dublin city venue?—I would have only one venue for the county and city of Dublin.

2661. Are there a great many respectable persons who have offices in the city of Dublin who live in the suburbs?—Yes.

2662. One of the objects of the change you propose would be, so to speak, to catch those persons?—Yes, there are many men doing a very large business who have rooms for offices, but they are not rated, and they never appear on the jury book.

2663. Do you think that the qualifications in the present Act are sufficient (that is to say, speaking for Dublin alone), or do you think that any qualification should be added?—I think that, besides the rating qualification, there ought to be a personal qualification; for instance, I would say all directors of public companies, and all insurance agents, the latter go before the barristers and get themselves off by showing that the companies were the persons who paid the taxes; they are an exceedingly intelligent class of men, and they would make excellent special jurors.

2664. Are there any others whom you would include?—Yes; all sons of special jurors who are otherwise qualified.

2665. If there was any endeavour to include that class of persons, how would you propose to get them put on the list?—I think there ought to be a discretion left to the revising barrister and the clerk of the peace to make inquiries; I could very easily ascertain those persons in Dublin.

Sir *C. O'Loghlen*—continued.

2666. Do I understand you to say that as soon as the list is made out by the clerk of the union, and sent to you in Dublin, for instance, that you think you ought to have the power to add the names of persons under these classes, and submit their names to the revising authority?—Yes.

2667. Who is the revising authority in Dublin?—There are two barristers provided for the purpose, who are also revising barristers for the list of Parliamentary voters.

2668. Is there any other class of persons besides those whom you have already mentioned that you think ought to be put on juries?—Yes; there are leaseholders, freeholders, and rent-chargers.

2669. Though they are not rated, you think they ought to appear on the jury list provided they are resident?—Yes. There are also great numbers not in trade go on the petty jury list from inhabiting houses rated only 20*l.* to 40*l.* a year, who are men of small though independent means, but are educated and very intelligent. Many of them will not serve on common juries, and yet they are lost to the special jury list.

2670. It is your duty to attend the revision court, is it not?—Yes.

2671. At the present time the clerk of the union makes out two returns, does he not; one for you to make out the jury list, and one to make out the Parliamentary list of voters?—In Dublin, the collector generally makes out the lists and sends them to me; he makes out one list for voters, and another for jurors, under the present Act of Parliament.

2672. Are both those lists printed and published?—Yes.

2673. In your opinion, would one list be sufficient?—Yes.

2674. If there was a list returned of the Parliamentary voters, you think that you could make out the list of jurors from that list?—Yes, and more perfectly than from the list that is now sent to me for juries, because a return is made of all the people that are rated; it is impossible, in Dublin, for the collectors to know the men who are incapacitated from age, and so on, and they may not know their professions, but the revision of the Parliamentary list takes place before the revision of the jury list, and there are, of course, parties on both sides who are very active in striking off dead or absent men, and we should have all the advantage of that.

2675. You think you would have a better list if it was done after the Parliamentary revision?—Yes.

2676. And one list would do, and save the present duplication of expense, would it not?—Yes, it would be much better; the collector general would have only to send in two copies of the Parliamentary list, and that would save double printing.

2677. Do you think that persons of over 60 years of age should be exempted from serving on juries?—That is too young, I think; it should be raised to 65 in my opinion.

2678. Now I understand that any person paying a small sum to the Stamp Office, and taking out a license to sell stamps, gets exempted in Dublin, is not that so?—All persons selling stamps are exempted; the consequence was, that at the first revision under the last Act, I should say that 30 or 40 men, not at all connected with the stationery trade, got exempted; there was

Mr. *Kernan.*

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Mr. *Kernan.*

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Sir *C. O'Loghlen*—continued.

one pork butcher who went and took out a license for stamps, and another one was a shoemaker, by paying 5 *s.* to the Stamp Office.

2679. They get exempted from serving on the jury, by paying 5 *s.*?—Yes.

2680. You think that should be done away with, do you not?—Yes, certainly; I think the Act of Parliament referred only to stamp distributors appointed by the Crown.

2681. Now, with regard to relieving jurors from constant attendance in court; have you any suggestions to make to the Committee?—Yes, I would make it compulsory that the jury should be called every morning at the sitting of the court, and I would have a small fine inflicted on every man who did not appear, unless there was a valid excuse. I would not even make it optional with the judges to remit the fine. I would make it by Act of Parliament a compulsory fine, and you would then get the jurors to attend; but now men take their chance, and from some men not attending you have now the same 12 men in each court trying all the cases in the respective courts, which is a great hardship on those who attend regularly.

2682. Would you, in Dublin, swear in a number of jurors in the morning, and let the rest go away?—Yes, the judge should, I think, swear in a jury to try the case which would be called on, and then another jury should be ballotted for, in order to have a jury in reserve in case the first jury differed, and let the rest of the jurors go for that day, and the next morning let them come and take their turn. I know that jurors in Dublin would not object to that, but they do object to losing their time for a whole day by waiting about and not being called.

2683. You would take away the exemption at the age of 60, and also the exemption of persons who call themselves stamp distributors; is there any exemption which you would confer on persons employed by others?—Yes, clerks, shopmen, carpenters, stonemasons, railway guards, waiters, judges' criers, and solicitors' clerks, all of whom are now liable to be on juries. Many of those humble men trying to make themselves as respectable as they can, get a small house, and they, perhaps, let lodgings, which their wives take care of. If they serve on juries they are deprived of their daily hire, and perhaps lose their situations.

2684. You would exempt by the statute anyone who was employed by another person earning a daily profit by daily labour?—Yes.

2685. You have had some experience of county juries in Monaghan and other places?—Yes; I may say that there is a very difficult question as to how the rating for counties is to be come at?

2686. Would it not do if it was a house rating?—I think there might be a house rating in the counties. If you take Griffith's valuation, and look at the low rating of buildings, you would see what a respectable class of people lived in those houses, you would be astonished, I think. I know a gentleman's house which is rated at 27 *l.* a year, and I know that he pays 100 *l.* a year for it; that gentleman is a magistrate, and the former proprietor was a deputy lieutenant and a Member of Parliament; it is a very superior class of house.

2687. You would say that a house rating of 20 *l.* or 30 *l.* would produce a better class of jurors than you can get from land rated at 100 *l.* or 150 *l.*?—Yes; I would say that a house rated at 10 *l.* or 15 *l.* a year would produce a better class of jurors. If gentlemen would look at their own residences in counties they would be astonished to see how small a valuation is put on them.

Mr. *Downing.*

2688. Can you name any small town of 4,000 inhabitants with which you are specially acquainted?—I am now speaking of the county proper.

Sir *C. O'Loghlen.*

2689. Have you any other suggestions to make to the Committee with regard to the qualifications in counties besides what you may call a house qualification?—I would have a freeholder's and a leaseholder's qualification.

2690. Where would you get those qualifications from?—From the Parliamentary list; you have them all there; freeholders, leaseholders, and rent chargers, and rated occupiers.

2691. I understand you to say that you would not confine yourself to what is called the rating qualification, but you would try and get in as many other classes as you could with liberty to the revising authority of striking off names?—Yes.

2692. Do persons attend before the revising authority in Dublin to get struck off?—Yes, a great many persons attend to get struck off because they are 60.

2693. Would you have notice given with reference to exemptions?—Yes, I think the clerk of the peace ought to attach to the notice of the sessions a list of the exemptions under the Act, and then if persons coming under any of such exemptions did not attend to get their names off, they would have nothing to complain of.

2694. Is there any other point which you wish to suggest with reference to the qualification?—No, I think not.

2695. With regard to the revision of the jurors list, you suggest that that should be done on the list of Parliamentary voters, so as to save trouble and expense?—Exactly so.

2696. Do you think it would be at all a popular mode to revert to the old system of giving a power of selection to the sheriff?—It would, I think, be most unpopular; so long as I recollect, there was always a talk that juries were being packed by the sheriffs.

2697. Now with regard to taking juries by ballot in civil cases; do you see any objection to that?—No.

Marquis of *Hartington.*

2698. With regard to the valuation of buildings, is it the fact that farm offices are rated low, as well as the houses?—Yes, the offices are included in the valuation; they all come under the name of buildings, they are all rated together.

2699. So that, in fact, a qualification of 10 *l.* or 12 *l.*, for buildings only, would probably be a pretty good qualification?—A very good qualification.

Mr. *Downing.*

2700. With regard to the qualification of jurors in towns; do I understand you to say that you would propose to lower the qualification?—No, that

Mr. *Downing*—continued.

that is for counties proper; I think that special juries could be obtained from Griffith's valuation of buildings. If you take Griffith's valuation of any county, and see how low some of the buildings are rated at, and see the persons inhabiting those buildings, you would find that they are persons of a very respectable class.

2701. Do you not find that the jurors from large towns are generally men of intelligence?—Certainly.

2702. You are perfectly well aware that a house rated in a town at 10 *l.* a year, would probably be 20 *l.* rent?—Yes, certainly.

2703. The rating qualification for towns in the Act of Parliament is 20 *l.* in some towns, is it not?—Yes.

2704. And in consequence of that you get scarcely any jurors in those towns?—Yes.

2705. Now do you know the town of Athlone?—I do not know much of the county towns. The evidence which I have been giving about buildings is only with regard to a complaint being made of persons rated at 200 *l.* or 300 *l.* in counties, who are very ignorant persons in some cases.

2706. I find that the population of Athlone in the year 1871 was 6,506, and that the number of houses valued at 12 *l.* and over, was only 181?—Yes.

2707. And the same applies to Bandon, in the county of Cork; in the year 1871 the population was 6,131, and only 191 houses were valued over 12 *l.*?—Yes.

2708. Do you not think that if the valuation were reduced to about 8 *l.* for qualification of cities, it would be a very great improvement?—I think it would; but my experience of county towns is not much.

Mr. *Bruen.*

2709. You said that you were in favour of clerks in the employment of others, and any persons earning daily bread, being exempted from serving on juries?—Yes.

2710. Do not a very great many people earn their daily bread?—Yes, but I mean persons having so much a day wages; such as carpenters, who have 5 *s.* 6 *d.* a day, and stonemasons, and that class of persons, who would lose a day's pay by serving on the jury; it is daily wages, of course, that I mean by saying those who earn their daily bread.

2711. That is to say persons paid by daily wages?—Yes, persons paid by daily wages.

2712. Then it would be in the power of any person who paid another for labour, to pay him daily wages, and in that way the employer might exempt his employee from serving on juries?—I would exempt all persons employed by others, because they risk losing their situations through having to serve; shopmen in Dublin, I know, run the risk of losing their situations through it; it may be that they are summoned for three weeks together at the after sitting of term, and it is a serious loss to a man carrying on a large business to lose his clerk or shopman for so long.

2713. Yet all those persons might be qualified according to the Act of Parliament?—Yes, they are qualified under the rating clause.

Sir *C. O'Loghlen.*

2714. You say that they may have a house, and let out lodgings?—Yes, they may be people who take small houses and let them in lodgings, and in that way they become rateable occupiers; and another thing is they wish to be on the list of Parliamentary voters, so that they take houses for that reason.

Sir *C. O'Loghlen*—continued.

Mr. *Bruen.*

2715. You also approve of the fines for non-attendance being compulsory without appeal?—Yes.

2716. With no power of remission to the judge?—None.

2717. Nor to any one else?—Just so; I would make the fine small, but it should be paid.

2718. A person is very frequently fined in his absence, is he not?—Yes.

2719. And that absence may be owing to illness?—There is no illness unless a person was actually struck down suddenly, such that he could not send some one to the court to excuse him; the recorder, who is a very reasonable man, will not let off any person with an excuse of not being able to attend personally; all the persons summoned before him have to do is to send a messenger to say that they are ill; the recorder will not mind a doctor's certificate, but he will ask a person of his own knowledge whether the absentee is ill or not; and if he says yes, he will excuse him. Now I would have it like this, some one should attend and give that evidence.

2720. Then in the case of a man who did not receive his summons, how would you dispose of that case?—I should hardly think under the present system of sending the summons by the post, that is possible.

Sir *C. O'Loghlen.*

2721. May he not have changed his residence?—Those exceptional cases might be provided for, if a man showed that he did not receive his summons; but I would require very strong evidence of that; if you once open that door you would have that excuse very often pleaded.

Mr. *Bruen.*

2722. You said that you knew some years ago that the summonses for service on panels were made out by the summons servers?—Yes.

2723. How many years ago is that?—Ten or twelve years ago, or more perhaps.

2724. Did that refer to Dublin only, or to other places?—To Dublin.

2725. Were you connected with the sheriff's office then?—No, not personally; but there was a person connected with me who was.

2726. Was that a frequent occurrence?—Whenever there was a jury wanting, a summons-server would be called upon to make out the jury.

2727. But was it the usual practice, or was it not?—It was.

2728. Have you any means of knowing whether that practice has been carried on since 10 or 12 years ago?—No, I have not; of course at present it cannot be carried on, because the list is made out alphabetically.

2729. Your evidence on that point does not come down later than 10 or 12 years ago?—No, it does not.

Mr. *Verner.*

2730. When were you sub-sheriff of Monaghan?—In the year 1842.

2731. Who

Mr. *Kernan.*

15 June 1874.

Mr. *Verner*—continued.

2731. Who was sheriff then?—Mr. John Boyle Kernan; he was a cousin of mine, and that is how I became sub-sheriff.

Sir *C. O'Loghlen.*

2732. You spoke about having fines, with no power to the judge to remit them; what I understood you to mean was this, that you thought fines, once imposed, should be levied?—Yes.

2733. That is to say, moderate fines?—Yes.

2734. It should not be looked upon as a farce?—They look upon it as a perfect farce getting a summons to attend under a penalty of 100*l.*

2735. I believe, in a case in Dublin, in which the Bishop of Clanfort was concerned, the jurors were summoned under a penalty of 100*l.*, and those who did not attend were fined 100*l.* by Chief Justice Whiteside; but the fine was not enforced?—Fines are very seldom enforced.

2736. You gave evidence to the effect that you think the city and county juries should be amalgamated with regard to the venue?—Yes.

Sir *C. O'Loghlen*—continued.

2737. Supposing that were not done and were left separate, should you think that what is called the metropolitan district, or the township, should be added to the city?—Yes, I think all suburban townships should be included in the city; in fact, what is known as the metropolitan district should be included.

2738. There is one institution called the market jury in Dublin, is there not?—Yes.

2739. Is there any reason for keeping that jury up?—The purpose for which it is instituted is gone; the duty is now performed by the police inspectors, and by the corporation.

2740. It is only an additional trouble upon the citizens?—Yes; 48 men have to be summoned every quarter, and out of that 24 are chosen, who never do anything.

2741. That is a mere farce, in fact?—Yes.

2742. And to do away with that would relieve a good many jurors?—Yes, to do away with that would certainly relieve a good many jurors.

APPENDIX.

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APPENDIX.

Appendix, No. 1.

PAPER handed in by Mr. *Ormsby*, 11 May 1874.

OATH OF HIGH SHERIFF.

Appendix, No. 1.

I, JAMES MARTIN, Esquire, do swear that I will well and truly serve the Queen's Majesty in the office of Sheriff of the County of the City of Dublin, and promote Her Majesty's profit in all things that belong to my office, as far as I legally can or may. I will truly preserve the Queen's rights and all that belongeth to the Crown. I will not assent to lessen or conceal the Queen's rights or the rights of Her franchises, and whensoever I shall know that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to have them restored to the Crown again, and if I may not do it myself, I will certify and inform the Queen thereof, or some of Her judges. I will not respite or delay to levy the Queen's debts for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors. I will do right as well to poor as to rich in all things belonging to my office. I will do no wrong to any man for any gift, reward, or promise, nor for favour or hatred. I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts or duties belonging to the Crown. I will take nothing whereby the Queen may lose, or whereby Her right may be disturbed, injured, or delayed. I will truly return and truly serve all the Queen's writs to the best of my skill and knowledge. I will take no bailiffs into my service but such as I will answer for, and will cause each of them to take such oaths as I do in what belongeth to their business and occupation. I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statutes of this realm. I have not sold nor let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself or any other person for me, or for my use directly or indirectly, my sheriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same to any person or persons whatsoever. I will truly and diligently execute the good laws and statutes of this realm, and in all things well and truly behave myself in my office, for the honour of the Queen and the good of Her subjects, and discharge the same according to the best of my skill and power. So help me God.

James Martin.

Sworn before me, this 26th day of January 1874, in the Court of Exchequer Chamber, in the County of the City of Dublin.

Richard Dowse.

Received, 26th January 1874.

Jno. V. Legge.

I certify that the foregoing is a true copy of the original oath filed in Her Majesty's Court of Exchequer in Ireland.

Jno. V. Legge, Chief Clerk.

Appendix, No. 1.

Oath of Under Sheriff.

I, William Ormsby, gentleman, do swear that I will well and truly serve the Queen's Majesty in the office of Under-sheriff of the County of the City of Dublin, and promote Her Majesty's profit in all things that belong to the said office, as far as I legally can or may. I will preserve the Queen's rights and all that belongs to the Crown. I will not assent to lessen or conceal the Queen's rights or the rights of Her franchises, and whensoever I shall know that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them to be restored to the Crown again, and if I may not do it myself I will certify and inform some of Her Majesty's judges thereof. I will not respite or delay to levy the Queen's debts for any gift, reward, promise or favour, where I may raise the same without great grievance to the debtors. I will do right as well to poor as to rich in all things belonging to my office. I will do no wrong to any man for any gift, reward, or promise, nor for favour or hatred. I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts, duties, or sums of money belonging to the Crown. I will take nothing whereby the Queen may lose, or whereby Her right may be disturbed, injured, or delayed. I will truly return and truly serve all the Queen's writs to the best of my skill and knowledge. I will truly set and return reasonable and due issues of them that be within my bailiwick according to their estate and circumstances, and make due panels of persons able and sufficient and not suspected or procured, as is appointed by the statutes of this realm. I have not bought, purchased, or taken to farm or contracted for, nor have I promised or given any consideration, nor will I buy, purchase, or take to farm or contract for, promise or give any consideration whatever by myself or any other person for me or for my use, directly or indirectly, to any person or persons whatsoever for the office of Under-sheriff of the county of the city of Dublin, which I am now to enter upon and enjoy, nor for the profits of the same, nor for any bailiwick thereof, or any other office or place belonging thereunto. I have not sold or contracted for or let to farm, nor have I granted or promised for reward or benefit, by myself or any other person for me or for my use, directly or indirectly, any bailiwick thereof, or any other place or office belonging thereunto. I will truly and diligently execute the good laws and statutes of this kingdom, and in all things well and truly behave myself in my said office, for Her Majesty's advantage and for the good of Her subjects, and discharge my whole duty according to the best of my skill and power. So help me God.

W. Ormsby.

Sworn before me, this 26th day of January 1874, in the Court of Exchequer Chamber, in the County of the City of Dublin.

Richard Dowse.

Received, 26th January 1874.

Jno. V. Legge.

I certify that the foregoing is a true copy of the original oath filed in Her Majesty's Court of Exchequer in Ireland.

Jno. V. Legge, Chief Clerk.

Appendix, No. 2.

LETTER from *C. H. Hemphill*, Esq., to the Chairman of the Committee, dated 8th June 1874.

Appendix, No. 2.

23, Merrion-square, S., Dublin,
8 June 1874.

Sir,

I AM in receipt of Mr. Kingscote's letter, enclosing part of the evidence given by Mr. Leahy before the Select Committee on the Jury System (Ireland). I have referred to my notes of the cases to the newspaper reports of which Mr. Leahy called attention. I do not consider that either of those cases afford a fair illustration, *pro* or *contra*, of the working of the present Irish jury laws. In Daniel Moriarty's case the prisoner was charged with stealing a sum of money in bank notes from the person of the prosecutor in a public-house, the latter being under the influence of drink at the time. The prisoner was arrested next day, and several notes were found in his possession. The prosecutor undertook to identify two five pound notes as his. After I had charged the jury, the foreman, after consulting with those jurors immediately near him, I took it that they had agreed, but some of those in the second or back tier of the jury box dissented, and I directed the jury to retire to their room to consider their verdict. After a short absence, they returned, and expressed a wish to see the notes in question, which were of course sent into the jury room, and they shortly afterwards convicted the prisoner. The verdict was a satisfactory one, and I at the time attributed their desire to see the notes to a wish to test how far the identification of two of them could be relied upon. Mr. Leahy was altogether, as it appears to me, under a mistake in supposing that their desire to see the notes was to make an excuse for their differing.

In Doolan's case the prosecutor (with the exception of the doctor) was the only witness examined for the Crown. It appeared that up to the occurrence complained of, the prisoner and he had been good friends, and had been drinking together in Tralee on the day in question. On their way home the wounding complained of was inflicted, but the prosecutor's account of the transaction was involved in mystery and obscurity. Whether this arose from inability to recollect what occurred, or from his not wishing to press the case against the prisoner, I cannot say. The prisoner was acquitted, and the verdict was not satisfactory, as logically there ought to have been a conviction, but I certainly did not attribute the result to want of intelligence or corruption on the part of the jury, but to the tendency to acquit, which I believe will always exist as long as trial by jury continues, where no bad motive, or ill-feeling previously existing, can be brought home to the accused.

All I can say, in conclusion, is, that both as chairman of quarter sessions, and as a practising barrister, I have very frequently known verdicts of this nature returned, both under the old and under the new system.

I have, &c.
(signed) *C. H. Hemphill.*

The Right Hon. Sir Michael Hicks Beach, Bart.,
&c. &c. &c.

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TO THE

REPORT

FROM THE

SELECT COMMITTEE

ON

JURY SYSTEM (IRELAND).

Ordered, by The House of Commons, *to be Printed,*
26 *June* 1874.

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Proposal that the first twenty-three persons who answered to their names upon the general list should comprise the grand jury; reasons for adopting this course, *Hamdill* 1886. 1889–1891, 1937–1944. 1955–1970——Disapproval of discontinuing the services of grand jurors at quarter sessions, *ib.* 1886. 1888–1890——Reference to the duties of the grand jury; greater intelligence needed on a common jury than on a grand jury, *ib.* 1937–1942.

Decided objection to the proposition to abolish grand juries at quarter sessions; grounds for this conclusion, *Armstrong* 2022, 2023. 2082; *Lefroy* 2137.

Greene, John Ball. (Analysis of his Evidence.)—Is First Commissioner of Valuation in Ireland, 2626——Information relative to the qualification for jurors, as based upon the valuation of property, the rate book being copied from the valuation list, 2627, 2628——Rules by which distinction is drawn between villages and towns; where there are more than 500 inhabitants the place is called a town, 2629–2632. 2636, 2637——Definition of the boundaries of a village, and of the means by which arrived at, 2633–2635.

Large number of persons excluded by the present qualification in the county of Dublin, who are well fitted to be jurors, 2638–2641——Suggestions for remedying the existing omissions and defects, with a view to obtaining better qualified jurors, 2642–2645.

Greer, James. (Analysis of his Evidence.)—Has held the office of Crown Solicitor for the county of Antrim since the year 1868; 1652–1654——Approval of the manner in which the juries in the county generally discharge their duties; improvement to the panel by the introduction of a superior class of men of good standing on the jury lists, 1655–1659——Disapproval of the alphabetical arrangement of names on the jury lists, 1659–1661——Opinion that a system of balloting would to a great extent remove the difficulty of the alphabetical system of selection; impartiality secured by balloting, 1662–1665. 1704, 1705. 1723–1725.

Instances of miscarriage of justice in Antrim since the passing of Lord O'Hagan's Act, 1666–1669. 1702, 1703——Expediency of increasing the qualification for town jurors from 12 *l.* rating to 20 *l.* in the county Antrim, 1670–1672. 1674. 1706–1708. 1730——Value of an educational qualification for the purpose of securing persons who would not otherwise be privileged to serve on juries, 1673——Questionable expediency of giving the sheriff the power of selection, 1675–1677.

Decided opinion that the magistrates at petty sessions, not the chairman, should be charged with the revision of the lists, 1678, 1679. 1713–1722. 1735, 1736. 1753——Proposal that publicans should be exempted from serving, 1680——Statement that in the county of Antrim there is always a sufficiency of jurors; with the present numbers no juror need be called on to serve oftener than twice in the same year, 1681–1691. 1699–1701——Disapproval of dispensing with the grand jury at quarter sessions, 1692, 1693. 1737.

Desirability of maintaining the right of challenge by the prisoner, and the right of the Crown Counsel, 1694–1698. 1731–1734——Approval of giving the judge power to excuse jurors from serving upon shewing sufficient cause, 1726–1729——Dissatisfaction at the last Belfast assizes, and also in 1873, on account of the low class of special jurors, 1738–1744——Complaints made at the quarter sessions by jurors at having been summoned from considerable distances, 1745–1752.

H.

Hamdill, Arthur. (Analysis of his Evidence.)—Is Chairman of the county of Roscommon, and has had considerable experience as a circuit barrister, 1871–1873——Decided approval of the changes in the jury system brought about by Lord O'Hagan's Act; important improvement by striking out illiterate persons, 1874–1878. 1893, 1894. 1927–1936. 1945–1948——Objectionable mode of selection of the juries under the old system, 1875, 1876——Confidence produced by the new Act, 1877.

Statement that the effect of the amending Act in Roscommon has been to materially lessen the number of jurors; statistical information on this subject, 1880, 1881. 1884–1886——Belief that the difference between the valuation and the actual rental in the county is less than one-fourth, 1881.

Opinion that certain existing exemptions should be abolished; expediency of keeping a book for the record of reasons for exemption, 1881–1883. 1922, 1923——Suggestion that it should be made obligatory for all persons who possess a 20 *l.* annual freehold in the county to serve on juries, 1883——Strong opinion in favour of abolishing the distinction between special and common jurors for sessions purposes, 1886.

Proposal that the first twenty-three persons who answered to their names upon the general list should compose the grand jury; reasons for adopting this course, 1886. 1889–1891. 1937–1944. 1955–1970——Argument in favour of adopting a 12 *l.* rating in towns and villages, 1886, 1887——Disapproval of discontinuing the services of grand jurors at quarter sessions; grounds for this opinion, 1886. 1888–1890.

Decided opinion in favour of revising the lists in the first instance before the magistrates at petty sessions; suggestion that the lists when revised should be exhibited to the public in conspicuous places, 1894, 1895. 1924–1926. 1950–1953. 1975–1977——Desirability of employing the constabulary for the service of summonses upon jurors; this would be more efficacious than service by means of registered letters, 1896–1898. 1918–1922. 1954——Confidence of the people in the constabulary, 1896.

Proposition that besides making out the general jurors' book, the clerk of the peace should have a duplicate book for his own use, 1899, 1900——Statement as to the present system of summoning jurors, 1901——Imposition of fines necessary in the case of non-attending jurors, 1902–1904. 1980–1983——Statistics as to the jurors of the county of Roscommon before the passing of Lord O'Hagan's Act, 1905.

Complaints of jurors as to the long distances they are sometimes obliged to travel when summoned; further sub-division of the counties desirable to avoid this cause of complaint, 1906–1914——Suggested remedy for the disadvantage which arises from trying cases by jurors living in the same locality as that in which the crime was committed, 1906–1909——Satisfactory manner in which the sub-sheriffs carry out the duty of summoning jurors, 1915–1917——Opinion that the sheriff should have discretionary power to summon jurors by means either of the post, or of the constabulary, 1921, 1922. 1954.

Examination with reference to the duties of the grand jury; greater intelligence needed on a common jury than on a grand jury, 1937–1942——Grounds for the conclusion that sixty years of age is too low a limit for exemption, 1953——Great object to be attained under the amended Act by getting as many special jurors as possible to sit with common juries, 1955–1957. 1962, 1963.

Further evidence in favour of summoning jurors by means of the constabulary; in the event of bad service the sub-sheriff should be fined, 1973, 1974. 1989–1993——Difficulty of diminishing the number of towns at which criminal sessions should be held, 1978, 1979——Expediency of the judges framing general rules from time to time with regard to the summoning of jurors, 1994, 1995.

Hamilton, James. (Analysis of his Evidence.)—Considerable experience of witness since his examination before the Committee last Session, as to the working of the Jury Act of 1873; 1, 2——Several instances of the continued inadequacy of jurors, notwithstanding the Act of last year; large number of challenges by the Crown Solicitor in three important trials for murder, 3–8. 29–43. 100–104. 134–142——Very unintelligent and inferior juries on the civil side of the court at the last assizes on the north-west circuit, the verdict in ordinary civil cases being really the verdict of the judge, 7. 143–153——Sympathy between the jury and the prisoner in agrarian or Ribbon cases, so that there is generally no finding, 7——Satisfactory verdicts generally in petty larceny cases at quarter sessions in Sligo; exceptions however to this rule, 9. 46, 47.

Modification of witness' former opinion in favour of revision of the jury list by the chairman of the county, 11. 110——Concurrence in the proposal, as in the English Juries Bill, that the revision should take place at special sessions before the justices; expediency of the resident magistrate being present, 11–15 48–55. 110——Great importance of the panel being carefully formed in the first instance, the best person to under-

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take this duty being the sub-sheriff, whilst the high sheriff should be responsible for it, and should make declaration that he had examined it, 13–22.

Suggestions as to the form of precept to the sheriff; approval on this point of the proposals of Judge Morris in his evidence of last Session, 16. 19–21——Evils of the present system of setting jurors aside on account of their religion, 16——Right of selection contemplated in the sheriff, rather than a mere power of expurgation from the list, 19, 20——Expediency of the burden of serving on juries being distributed as much as possible, 20. 23——Concurrence in Judge Morris' objections to the system of alphabetical selection of the panel, 21, 22. 44.

Necessity of largely raising the qualification for jurors, unless a power of selection is given to the sheriff, 22——Sufficiency of the qualification of 20 *l.*, the sheriff exercising a right of selection, 22, 23——Inability of securing an adequate number of jurors if the qualification were raised to 50 *l.*, 22. 97, 98——Entire failure of the Amendment Act of 1873, in the event of political excitement; necessity under the Act of a system of "packing," 24——Continued inferiority of special jurors, these having greatly deteriorated, 25–27. 82, 83—— Approval of Serjeant Armstrong's suggestion for returning to the old system of special jurors; that is, in civil actions, 26–28——Objection to prisoners being tried by special juries, save in extreme cases, 28.

Approval of the substitution of rating for the old qualification, 44, 45. 88——Contemplated examination on oath when names on the list are objected to before the magistrates, 53–55. 75, 76——Consideration of objections to the proposal that the high sheriff and sub-sheriff should make out the list; dissent from Serjeant Armstrong's views on this point, and concurrence in those of Chief Justice Whiteside, 56–78. 122, 123——Expediency of power to omit Orangemen from Orange trials, and Ribbonmen from Ribbon trials, 71, 72. 124–126. 201.

Convenience of the alphabetical system in the preparation of the lists, though it is very objectionable in the preparation of the panel, 78–81. 89, 90——Expediency of an assimilation of the law in Ireland and England, as far as possible, 84. 158——Approval of power in the judge or chairman of quarter sessions to excuse a juror, or to direct his removal from the panel, 85–87——Improvement if juries were summoned by post instead of by sheriffs' bailiffs, 91, 92. 127.

Concurrence in the suggestion in the English Jury Bills that seven jurors shall suffice in civil cases, unless the parties insist on twelve, 92——Proposed adoption for Ireland of the various qualifications in the English Bills, *ib.*——Continued inferiority of jurors, notwithstanding the increased qualification under the Act of 1873; 93–96——Contemplated revision of the lists at special sessions in each petty sessions district; data upon which the revision should proceed, 99. 154–159. 265–271——Very objectionable effects of the extensive challenges by the Crown Solicitor under the present system, whereas it is a necessity of the system, 104–109. 165, 166.

Necessity of the sheriff having regard to competence in distributing the burden of service as far as possible over the whole body of jurors, 110–117. 179–187——Less vigilance necessary in the revision of the lists if they are properly formed by the sheriff in the first instance, 118–121——Probable saving of expense by not following the strict dictionary order in the compilation of the jurors' book, 127–133——Further objection to special juries in criminal cases in Ireland, 160–164.

Evidence in further support of the conclusion that revision by the chairman of quarter sessions is very imperfect as compared with selection in the first instance by the sheriff, and subsequent revision before the local magistrates, 165–187——General concurrence of evidence in 1873, save in the case of one or two witnesses, in favour of a power of selection in the sheriffs, 188–191. 196. 240–248——Total disagreement with Serjeant Armstrong's evidence in 1873 as to the partial framing of the panels under the old system, 188——Very little weight attached to a statement by Chief Justice Monahan reflecting on the sheriff's formation of the panel, 189–191.

Feeling among the disorderly and disaffected classes in the north of Ireland, but not among the orderly classes, that the jury panels have been partially framed; examination hereon to the effect that witness does not impute disaffection to the bulk of the Roman Catholic population in Ulster, 192–195. 202–211——Further advocacy of power in the sub-sheriff to decide who are competent jurors, witness submitting that this is a necessity of the case, 196–201. 212, 213. 257, 258——Expediency of power in the magistrates in petty sessions to remove names from the jurors' book, without being required to assign reasons, 214–216.

Religious persuasion of sheriffs in the north of Ireland adverted to in connection with the prospect of impartiality on their part in framing the panel, 217–225——Importance of the sheriff going through the jury book in fixed order in carrying out the work of selection, 226–229——Belief that there would be no ground for suspicion as regards revision by magistrates, who may be all Protestants, 230–234——Consideration of objections

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objections to the service of jury summonses by post; disapproval of service by the police, 235–239. 272–279.

Explanation relative to certain evidence of Mr. Reilly in 1873, on the question of partial framing of the panels in Monaghan by the sub-sheriff, 240–248——Objectionable course adopted by Judge Morris on a certain occasion as regards the mode of trying the panel; suggestions generally on this point, 249–256. 259–264——Belief that the sub-sheriffs would not abuse their public position by selecting juries "to order," 257——Importance further attached to a direct check in the high sheriff, 258.

Hemphill, C. H. Letter from Mr. Hemphill to the Chairman of the Committee explanatory of certain verdicts referred to in the evidence of Mr. Leahy, *App.* 161.

High Sheriff. Concurrence of evidence as to the importance of a direct check and responsibility in the high sheriff in regard to the panel, and the action of the sub-sheriff, *Hamilton* 13–22. 56–78. 122, 123. 258; *Ormsby* 696–714——Considerations as to the mode of appointment of the high sheriff and as to his responsibility, *ib.* 696–714.

Form of oath of high sheriff, *App.* 159.

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I.

Intimidation. Difficulties in obtaining convictions in capital cases before the new Act was passed; opinion that intimidation has been the cause of many unsatisfactory verdicts, *DeMoleyns* 1123–1128. 1137, 1138. 1153–1157. 1196–1198——Impossibility of obtaining convictions in some cases when jurors are summoned from the immediate district in which the crime is committed, *Leahy* 1319–1326——Instance in which an acquitted prisoner was imprisoned for contempt of court for threatening a juror who had held out against him, *Murphy* 2248, 2249——Belief that under the present system the fearless and independent jurors, who are necessary to the preservation of law, do not exist, *ib.* 2320–2323.

J.

Johnson, Joseph Bullew. (Analysis of his Evidence.)—Has been sub-sheriff of the county of Cork for fifteen years, 745–747——Statement of the number of quarter sessions held in the county annually, 748——Number of jurors summoned for the grand jury at the quarter sessions; liability, under the new Act, of grand jurors to serve at the assizes, 749–751. 825——Information with regard to the number of special jurymen on the jurors' book for the county; considerable number struck off by the new Act, 752–757——Effect upon the number of jurors by raising the qualification in the county; opinion that there should be a qualification for assize jurors distinct from sessions jurors, 758–763.

Hardship in summoning jurors from one district into another; suggestions as to avoiding this hardship, 764–766——Examination as to the expediency of adopting selection as the means of obtaining jurors; disapproval of giving the sheriff the power of selection, 767–774. 837–867. 899–915. 941–961——Decided opinion in favour of revision before the magistrates at petty sessions; local knowledge, the chief requisite for a successful revision, 775–784. 875–898——Expediency of further revising the jurors' list since the amended Act, 785——Considerable advantages resulting from the Act, 786–788.

Enormous increase in the expense of summoning jurors since the passing of the Act, 789. 807——Expense of summoning jurors borne by the sub-sheriff; discretionary power of the grand jury to present the extra expenses to the sub-sheriff, 790–792——Examination as to the best means for summoning common jurors; expediency of employing the process servers upon this service, 793–796. 924, 925. 972–975——Desirability of summoning grand and special jurors by means of registered letters; inexpediency of extending this system to common jurors, 797–802. 924, 925. 939, 940——Remuneration to the bailiff for summoning common jurors fixed by Statute at 6 *d.* per summons; opinion that this remuneration should be increased, 804–806. 973–975.

Considerable number of jurors excused from serving by the judge at the last Cork assizes; reasons for this exemption, 808–823. 916–920. 927–933——Decided approval of grand jurors at quarter sessions being called upon to serve as common jurors at assizes; grounds for this opinion, 824–836——Necessity for a careful revision of the jurors' book, as, without it, an intelligent jury cannot be procured, 830–836——Opinion favourable to the sheriff adopting alphabetical order in the selection of jurors, with an alternate discretionary power to place names on the panel, 856–863.

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The jurors' books should be made out in dictionary order, 868, 869——Circumstances in which the sheriff must disregard the dictionary order when selecting jurors, 870——Opinion that the proposed alternate discretionary power of the sheriff should be applied to all the large counties in Ireland 871, 872——Insufficiency of the rating qualification in its not reaching a large class of intelligent jurors; means by which persons without such qualification may be reached, 878–889——Disapproval of the sheriff interfering in any way with the construction of the jurors' book, 895.

Contention that it is the duty of the juror alone to make objection to his being placed upon the panel, 896–898——The objection of witness to a system of selection by the sheriff is personal, and not theoretical, 900–915——Expediency of a provision in the Act that no person's name should be returned as a juror which had been previously struck off on account of ignorance or age, 918, 919——Opinion that after a revision of two or three years there will be a perfect jurors' book, 919.

Room for further improvement under the new Act as regards special jurors; expediency of adding certain classes of persons to the special jury list, 922, 923. 955–961——Statement that since the new Act has come into operation, jurors have not attended more numerously, 926——Satisfactory character of a jury which tried a case of political tendency at the last Cork assizes, 935–938.

Responsibility of the high sheriff of Cork County for the selection of jurors; performance of the duties by the sub-sheriff, 941–943——Expediency of the county divisions corresponding with the sessions districts; action of the Lord Lieutenant sufficient for this purpose without legislation, 948–950——Examination as to the expediency of enforcing fines upon jurors who do not attend; insignificant amount of fines levied last year, 962–971——Opinion that if fines were enforced, the number of jurors required would be very much reduced, 976–979.

Inexpediency of reducing the number of grand jurors below thirty-four or thirty-six; questionable necessity of grand jurors at all at quarter sessions, 980–991——Difficulty, under the present system, as to the Crown ordering jurors to stand by, 992–998——Desirability of increasing the remuneration of assize jurors in record cases, 999, 1000.

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Juries Act and Juries (Ireland) Act. See *Act of* 1871. *Act of* 1873.

Jury Lists. See *Alphabetical Selection. Area (Jury Lists). Ballot. Expenses. Qualifications of Jurors. Revision of Jury Lists. Sheriffs (Sub-sheriffs).*

K.

Kernan, Charles. (Analysis of his Evidence.)—Is a solicitor in Dublin, and has been clerk of the peace for that city for fourteen years, 2646–2648——Has also held the office of sub-sheriff of Monaghan, and has had considerable experience in the working of the present jury system, 2649–2651.

Constant complaints under the old system as to the mode in which the sub-sheriffs exercised their duties in Dublin, 2652–2655——Considerable improvement in the petty jurors since the passing of the amended Act, 2656–2659——Expediency of amalgamating the Dublin county venue with the city venue; grounds for this conclusion, 2660–2662. 2736–2742.

Contention that besides the rating qualification for jurors, there should be a personal qualification, 2663–2669——Argument in favour of revising the jurors' lists upon the basis of the Parliamentary voters' list, 2671–2676. 2695——Suggestions relative to the abolition of certain exemptions; opinion that the limit of age should be raised to 65; 2677–2680. 2683, 2684. 2692, 2693——Decided advantage of inflicting a small fine on every juror who did not appear when called in court, 2681, 2682. 2715–2721. 2732–2735.

Examination as to the present qualification in counties; expediency of a reduction both in cities and counties, 2685–2689. 2698–2708——Approval of a freeholder's and a leaseholder's qualification, 2689–2691——Exemptions necessary in the case of persons who are employed by others as clerks and shopmen, 2709–2714——Former service of summonses in Dublin by the process servers; this was ten or twelve years ago, 2722–2729.

Kerry. Superior character of the jurors in Kerry under the former system; deterioration under the amended Act, *Baron Deasy* 2489–2491.

L.

Landowners. Dissatisfaction on the part of owners of property with the new Act; reference to The O'Conor Don's case in support of this conclusion, *Leahy* 1293. 1300. 1340–1343.

Leahy, John, Q.C. (Analysis of his Evidence.)—Is Chairman of the county of Limerick, and has been a magistrate of the county of Kerry for thirty years, 1275–1279——Has attended regularly the grand jury since retiring from practice; has been also Crown Prosecutor in the county of Cork for many years, 1280–1282——Defective state of the jury system previous to Lord O'Hagan's Act; unsatisfactory working of the Act, 1285, 1286. 1349–1353——Statement also that the working of the amended Act of 1873 is anything but satisfactory; reasons for this opinion, 1287–1290.

Suggestions as to the best modes of extending the jury lists; complaints that under the old system the same men were always summoned from the same locality, 1290–1292. 1298, 1299. 1305, 1306. 1308, 1309. 1362–1364. 1411–1414——Necessity for a strict and rigid revision of the lists in the absence of selection by the sheriff; opinion that this revision should be exercised by the chairman of counties, 1293–1297. 1345. 1365–1376. 1426–1435. 1444, 1445.

Difficulty in getting magistrates sufficient to revise the lists at petty sessions; the action of the magistrates, if employed on the revision, should be only preliminary, 1293–1296. 1345. 1365–1369. 1405——Importance of the Crown Solicitor being present at the revision of the lists, 1296, 1297——Inability to read and write should be considered a disqualification, 1298, 1299. 1393–1395——Dissatisfaction on the part of owners of property with the new Act; reference to The O'Conor Don's case in support of this opinion, 1300. 1340–1343.

Large numbers of jurors who are summoned but do not attend; expediency of fining for non-attendance, 1301–1304. 1422–1425——The remission of fines by the judges at assizes is a great misfortune, 1303——With the present panel, if they answered to their names, there would be good juries, 1304——Examination as to the numbers of jurors necessary for judicial business in the counties of Limerick and Kerry; opinion that each juror should serve at the assizes once in two years, and once a year in the quarter sessions, 1304–1306. 1391, 1392. 1398–1401.

Possible advantage in doing away with quarter session grand jurors, and throwing them into the general list, 1307——Belief that summoning jurors by means of the post would be effectual in all but seven counties of Ireland; disapproval of the employment of petty sessions summons servers on this duty, 1310. 1419–1421——Expediency of employing the constabulary for summoning jurors; after the constabulary the quarter sessions process servers would be the best, 1310, 1311. 1379–1387.

Considerable expense in carrying out the new Act; outcry by the cess-payers against the Act on this account, 1311–1314——Instances of failure of justice on account of the ignorance of jurors under the Act; extent to which the law is brought into contempt, 1315. 1318. 1327–1339. 1354–1357. 1388–1390.

Desire on the part of juries to find an excuse for differing when the evidence is quite clear, 1316——Reasons for the extraordinary verdicts sometimes given by juries; fear of convicting occasionally the cause, 1318——Impossibility of obtaining convictions in some cases when jurors are summoned from the immediate district in which the crime is committed, 1319–1326——General approval of Mr. Fergusson's suggestions as to subdividing districts when practicable, 1319. 1323–1326.

Strong disapproval of the alphabetical system of selecting jurors as at present carried out; expediency of continuing the system, if power of selection be given to the sheriff, 1346–1348——Statement that under the previous Act there was no legal jury at all, owing to the defective state of the panel, 1349, 1350——Difficulty experienced in the county of Limerick, as there are only two districts from which to take jurors, 1358–1361——Expediency of the panel being called over on the first day of the sessions, and of the jury being ballotted for from the names, 1377, 1378.

Decided opinion that the chairman at quarter sessions should have the power to discharge a person from serving on a jury on account of poverty; practice of witness to do so, 1396, 1397——Belief that the system of canvassing jurors is carried on to a great extent, 1402–1405——Desirability of excluding from exemption stamp distributors and rate collectors in Ireland, 1405, 1406. 1409.

Opinion that the rating qualification for large and small towns should be the same, 1407–1409——Approval of exempting habitual drunkards, persons convicted of felony, and attorneys' clerks, from serving on juries, 1409, 1410——Power of the Crown Solicitor to order jurors to stand by, exercised more frequently since the passing of Lord O'Hagan's Act, 1415–1417.

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Leahy, John, Q.C. (Analysis of his Evidence)—*continued.*

Advantage of the clerk of the peace being a resident as laid down by Act of Parliament, 1418——Proposal that the chairman at quarter sessions should have the power of paying the expenses of officers for summoning jurors, the same as in civil cases; the payment not to exceed one guinea in any case, 1427–1432.

Question as to the legality of the sub-sheriff continuing in office for many years; belief that the practice is contrary to law, 1436–1438——Further evidence in favour of the sheriff exercising a partial discretion in the formation of the jury panel; difference of opinion on the part of the judges as to the formation of juries upon the alphabetical system, 1440–1443——Doubt as to the expediency of exempting vice-consuls from serving on juries, 1446–1448——Further statement that no rating qualification would be a guarantee for intelligence; absolute necessity of a discretionary power of selection being vested in some one, 1449–1460.

[Second Examination.]—Decided opinion that the genral panel, including special and common jurors, should be called at the sessions as it is at the assizes, 1650——Information as to the extensive jurisdiction of the court of quarter session in Ireland, 1650, 1651——Strong disapproval of necessarily quashing the panel on account of a mistake made in the selection, when it clearly appears that there is no corrupt motive on the part of the sheriff, 1651.

Lefroy, Thomas. (Analysis of his Evidence.)—Is a Queen's Counsel, and has held the office of chairman of the court of quarter sessions for the county of Kildare for sixteen years, 2107–2110——Extraordinary number of prisoners tried at the Roscommon assizes in the years 1848 and 1849; 2110——Independence and general intelligence of the Galway common juries, 2110——Opinion that the old jury system had not forfeited the confidence of the public, 2112.

Great failure of the new system in respect of the want of independence and intelligence of the jurors, 2113——Utter ignorance of their duty shown by jurymen under Lord O'Hagan's Act; instance in which a juror stated that he would find no prisoner guilty, 2113–2117. 2139, 2140. 2181–2184——Hardship on poor jurors in being brought to serve from distances as great as twenty miles, 2117.

Emphatic disapproval of taking away from the sheriff the power of selection; belief that it is essential to the due administration of the law that the sheriff should not be restricted in this particular, 2118. 2137. 2143–2154——Suggestions for the improvement of the amended Act, 2118 *et seq.*——Expediency of adding considerably to the present rating qualifications of jurors; information as the additions required, 2119–2121. 2134–2136. 2143——Publicans should be exempted from serving on juries. 2122——Conviction of certain crimes should also disqualify persons from serving, *ib.*——The limit of age should be enlarged from sixty to seventy years, 2123.

Evils of the present system of imposing fines upon jurors; such fines should be a matter of course, 2123–2125——Desirability of the magistrates revising the lists at a special sessions, and not at the petty sessions, 2126–2129——Advantage of a final revision by the chairman upon appeal, 2126–2129——Absence of objection in taking the jurors from within an area of ten miles of the town where the quarter sessions are held, 2130, 2131——Examination as to the propriety of permitting peremptory challenges in all cases; frequent abuse of this privilege, 2132. 2205–2209.

Approval of the English arrangement as to having seven jurors in civil cases with a right to either side to call twelve; opinion that this should not be extended to criminal cases, 2133——Strong disapproval of abolishing the grand jury, 2137——Possibility that by increasing the qualification the number of jurors will be diminished, 2142——Obligation upon the sub-sheriff that he should provide competent jurors; question hereon as to the responsibility of the high sheriff for the competency of the panel, and of the jury, 2144–2151. 2232, 2233——Strong opinion as to the impartiality of the sub-sheriff in forming the jury panel, 2152–2159.

Further evidence as to the expediency of adopting additional qualifications for jurors; addition of 228 names to the lists of jurors in Kildare by this means, 2160–2171——Additional instances of their incapacity to discharge the duties of jurors, 2173–2185——Advantage of the lists being made out in alphabetical order, though the selection should not be in the same way, 2189, 2190.

Evidence with further reference to the revision of the lists; suitability of the sheriff to carry out the selection, 2191–2204. 2210–2212. 2219–2231——Further suggestions relative to the system of fining jurors who do not attend, 2214–2218.

Leitrim. Illustration of the very bad juries in Leitrim under the Act of 1871, *Baron Deasy* 2482–2484.

Limerick County. Information as to the working of the new Act at the two last assizes at Limerick; questionable improvement of the juries under the Act, *De Moleyns* 1109–1113. 1123–1128. 1130–1132——Statement that in Limerick the jurors are taken chiefly from the agricultural class; expediency of putting the city jurors upon the general county books for the purpose of assize trials, *ib.* 1117–1120. 1149. 1168–1171. 1191–1193——Striking

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Examination as to the proper tribunal for the revision of the jury lists; importance of having the officers of the constabulary associated with the magistrates and the chairman of quarter sessions, *Armstrong* 2008–2012. 2027–2034. 2072–2078——Belief that the intervention of the magistrates in the revision of the jury lists would cause dissatisfaction in Ireland, *ib.* 2008. 2011, 2012——Advantage of a final revision by the chairman upon appeal, *Lefroy* 2126–2129——Conclusion with reference to the revision of the jurors' lists that it should be carried out at the court of quarter sessions, *J. Burke* 2430–2439. 2474–2478——Suggestions for the revision of the lists before the chairman and magistrates at quarter sessions, *Baron Deasy* 2601–2603. 2605–2609.

2. *Suggestions for Revision by the Magistrates at Petty Sessions or at Special Sessions:*

Concurrence in the proposal, as in the English Juries Bill, that the revision should take place at special sessions before the justices; expediency of the resident magistrate being present, *Hamilton* 11–15. 48. 55. 110——Contemplated revision of the lists at special sessions in each petty sessions district; data upon which the revision should proceed, *ib.* 99. 154–159. 265–271——Expediency of power in the magistrates in petty sessions to remove names from the jurors' book, without being required to assign reasons, *ib.* 214–216.

Decided opinion in favour of revision before the magistrates at petty sessions; local knowledge the chief requisite for a successful revision, *Johnson* 775–784. 875–898; *West* 1017–1021. 1046. 1054–1075——Examination as to the means to be adopted for revising the jury lists; approval of this duty being undertaken by the magistrates at petty sessions, *De Moleyns* 1121, 1122. 1138–1147. 1173–1188——Opinion that magistrates when revising the jury lists should not strike off the name of any jurors "from their own knowledge;" expediency of adopting the clause in the English Act with that exception, *ib.* 1173–1178. 1199–1208.

Difficulty in getting magistrates sufficient to revise the lists at petty sessions; the action of magistrates if employed on the revision should be only preliminary, *Leahy* 1293–1296. 1345. 1365–1369. 1405—— Examination as to the course to be pursued in the revision of the lists; opinion that the magistrates or chairman should have discretionary power to reject individuals on account of unfitness, notwithstanding that they may be highly rated, *Bolton* 1502–1509. 1572–1575——Suggestion that lists of qualified persons be annually furnished to the clerks of petty sessions by the barony constables for general revision by the chairman, *ib.* 1502——Additional suggestions as to the revision of the lists by the magistrates at petty sessions; inexpediency of names being struck off the list except by the chairman at quarter sessions, *ib.* 1592–1598. 1615–1618.

Report, 1874—*continued.*

Revision of Jury Lists—continued

2. *Suggestions for Revision by the Magistrates, &c.*—continued.

Decided opinion that the magistrates at petty sessions, and not the chairman, should be charged with the revision of the lists, *Greer* 1678, 1679. 1713–1722. 1735, 1736. 1753 ——Approval of the revision of jury lists being carried out at the petty sessions; nominal character of the revision by the chairman at the quarter sessions, *Boyd* 1765——Decided opinion in favour of revising the lists in the first instance before the magistrates at petty sessions; suggestion that the lists when revised should be exhibited to the public in conspicuous places, *Hamdill* 1894, 1895. 1924–1926. 1950–1953. 1975–1977.

Desirability of the magistrates revising the lists at a special sessions, and not at the petty sessions, *Lefroy* 2126–2129——Approval of the magistrates being charged with the revision of the lists; the magistrates know well the persons in their own districts, *Murphy* 2330–2335. 2366–2373. 2408–2414——Expediency of revising the lists at a special sessions with the view of attaching importance to the duty, *ib.* 2335. 2366. 2372, 2373.

Resolution of the Committee that the lists should be revised at special petty sessions in each district, subject to appeal to quarter sessions, *Rep.* iii.

Roscommon. Statement that the effect of the amending Act in Roscommon has been to materially lessen the number of jurors; statistical information on this subject, *Hamdill* 1880, 1881. 1884–1886——Belief that the difference between the valuation and the actual rental in the county is less than one-fourth, *ib.* 1881——Statistics as to the jurors of the county before the passing of Lord O'Hagan's Act, *ib.* 1905.

Extraordinary number of prisoners tried at the Roscommon assizes in the years 1848 and 1849, *Lefroy* 2110.

S.

Selection of Panel. See *Alphabetical Selection. Ballot* (*Jury Panel*). *Sheriff* (*Sub-sheriff*.

Service of Jurors. Instances of the same person being summoned to serve on juries four times in a year, *Ormsby* 493, 494——Opinion that the same persons should not be summoned twice in the same year, and that each juror should take his turn, *Bolton* 1510.

Conclusions of the Committee with a view to the burden of service being fairly and impartially distributed amongst all persons whose names are upon the jurors' books, *Rep.* iii——Suggestion that a juror be not summoned a second time who had already served until a summons has first been served on all those whose names are on the hooks, *ib.*

See also *Area* (*Jury List*). *Exemptions. Summonses. Sheriffs, or Sub-sheriffs.*

Sheriffs, or Sub-sheriffs (*Selection of Panel*):

1. *Evidence in favour of a full Power of Selection in the Sub-sheriff; his Impartiality in the Matter.*
2. *Evidence adverse to the proposed Exercise of the Right of Selection.*
3. *Suggestions for a System of alternate Selection by the Sheriff.*
4. *Duties and Remuneration of the Sheriffs; Form of Oath taken.*
5. *Suggestions relative to the Distribution by the Sheriff of the Burden of Service.*

1. *Evidence in favour of a full Power of Selection in the Sub-sheriff; his Impartiality in the Matter:*

Great importance of the panel being carefully formed in the first instance, the best person to undertake this duty being the sub-sheriff, whilst the high sheriff should be responsible for it, and should make declaration that he had examined it, *Hamilton* 13–22 ——Suggestion as to the form of precept to the sheriff; approval on this point of the proposals of Judge Morris in his evidence of last Session, *ib.* 16. 19–21——Right of selection contemplated in the sheriff, rather than a mere power of expurgation from the list, *ib.* 19, 20——Consideration of objections to the proposal that the high sheriff and sub-sheriff should make out the list; dissent from Serjeant Armstrong's views on this point, and concurrence in those of Chief Justice Whiteside, *ib.* 56–78. 122, 123——Witness does not attach much importance to the objections on the part of the sheriffs themselves, *ib.* 57–60. 122, 123.

Less vigilance necessary in the revision of the lists if they are properly formed by the sheriff in the first instance, *Hamilton* 118–121——General concurrence of evidence in 1873, save in the case of one or two witnesses, in favour of a power of selection in the sheriffs, *ib.* 188–191. 19 240–248——Total disagreement with Serjeant Armstrong's evidence

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SHERIFFS, OR SUB-SHERIFFS (*SELECTION OF PANEL*)—continued.

1. *Evidence in favour of a full Power of Selection in the Sub-Sheriff, &c.*—cont^d. evidence in 1873 as to the partial framing of the panels under the old system, *Hamilton* 188——Very little weight attached to a statement by Chief Justice Monahan reflecting on the sheriffs' formation of the panel, *ib.* 189-191——Further advocacy of power in the sub-sheriff to decide who are competent jurors, witness submitting that this is a necessity of the case, *ib.* 196-201. 212, 213. 257, 258——Importance of the sheriff going through the jury book in fixed order in carrying out the work of selection, *ib.* 226-229——Belief that the sub-sheriffs would not abuse their public position by selecting juries to "order," *ib.* 257.

Necessity for some official having the control of the selection of juries; conclusion as to the sub-sheriff being the best person for the purpose, the high sheriff being responsible, *Ormsby* 476-479. 559-564. 696-714——Expediency of fining the sheriff if it were proved that he did not act fairly in his selection of juries, *ib.* 560——Importance of Irish legislation being similar to English in regard to juries; advisability of giving the sheriff discretionary power in selecting jurors, *West* 1013-1016. 1025, 1026. 1029. 1044. 1050-1053. 1075. 1086-1088. 1100, 1101——There might as well be no sheriff if he has no power of selecting jurors, *C. G. Burke* 1244——Evidence in favour of the sheriff exercising a partial discretion in the formation of the jury panel; difference of opinion on the part of the judges as to the formation of juries upon the alphabetical system, *Leahy* 1440-1443

Expediency of the sheriff having power of selection; necessity for this power of selection in order to distribute fairly the burden of service, *Bolton* 1510, 1511. 1532-1545. 1557-1560. 1643, 1644——Opinion that the sheriff should have the power of arraying the panel from the jurors' book, *ib.* 1599-1604——Absence of bias or partiality on the part of the sheriff as regards the selection of the jury panels, *Boyd* 1810.

Emphatic disapproval of taking away from the sheriff the power of selection; belief that it is essential to the due administration of the law that the sheriff should not be restricted in this particular, *Lefroy* 2118. 2137. 2143-2154——Obligation upon the sub-sheriff that he should provide competent jurors; question hereon as to the responsibility of the high sheriff for the competency of the panel and of the jury, *ib.* 2144-2151. 2232, 2233——Strong opinion as to the impartiality of the sub-sheriff in forming the jury panel, *ib.* 2152-2159——Evidence with further reference to the revision of the lists and the suitability of the sub-sheriff to carry out the selection of the panel, *ib.* 2191-2204. 2210-2212. 2219-2231.

Decided opinion that under the former system the jury list did really represent those who ought properly and legally to be on it; selection by the sheriff the reason for this, *Murphy* 2251-2254. 2374-2378——There never was a charge of partiality made against the sheriff in any of the counties with which witness was connected, *ib.* 2254——Further evidence in favour of giving the sheriffs power to select jurors from the panel without reference to their creed or religion, *ib.* 2295-2303. 2319. 2324, 2325. 2337. 2343.

Decided opinion that the old system should be reverted to; the recent change has been a "leap in the dark," *Baron Deasy* 2492. 2513, 2514——Reasons in detail for the conclusion that the power of selection should be given to the sheriff, *ib.* 2514. 2521-2525. 2531-2534. 2556. 2571-2573. 2595-2600. 2610-2618. 2621-2625.

2. *Evidence adverse to the proposed Exercise of the Right of Selection:*

Disapproval of a power of selection in the sheriff, or in any one, save in open court, *Fergusson* 356, 357. 404-417. 442-445——Evidence adverse to a full power of selection in the sheriff, *Johnson* 767 *et seq.*——Disapproval of the sheriff interfering in any way with the construction of the jurors' book, *ib.* 895——The objection of witness to a system of selection by the sheriff is personal, and not theoretical, *ib.* 900-915.

No power of selection should be given to the sheriff after the jury lists have been revised by the magistrates in petty sessions, *De Moleyns* 1139——Questionable expediency of giving the sheriff the power of selection, *Greer* 1675-1677——Objectionable mode of selection of the juries under the old system, *Hamdill* 1875, 1876——Consideration of the duties of the sheriff in relation to furnishing the jury panel, *J. Burke* 2444-2446——Objection to giving the sheriff absolute power of selection of the jury panel, *ib.* 2479-2481.

3. *Suggestions for a System of alternate Selection by the Sheriff:*

Examination in disapproval of giving the sheriff the full power of selection, but rather a power of alternate selection, *Johnson* 767-774. 837-867. 899-915. 941-961——Opinion that the proposed alternate discretionary power of the sheriff should be applied to all the large counties in Ireland, *ib.* 856-863. 871, 872.

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SHERIFFS, OR SUB-SHERIFFS (SELECTION OF PANEL)—continued.

4. *Duties and Remuneration of the Sheriffs; Form of Oath taken:*

Strict nature of the oaths taken by the sheriff and the sub-sheriff, *Ormsby* 502——The sheriff should be a highly-paid Government officer, *ib.* 560–562——Large security given by the under sheriff for the due performance of his duties; virtual responsibility of the high sheriff, *ib.* 696–699.

Question as to the legality of the sub-sheriff continuing in office for many years; belief that the practice is contrary to law, *Leahy* 1436–1438——The sub-sheriff should be remunerated for his services; evils of not paying these officers, *Bolton* 1513–1516.

Form of oath of under-sheriffs, *App.* 160.

5. *Suggestions relative to the Distribution by the Sheriff of the Burden of Service:*

Necessity of the sheriff having regard to competence in distributing the burden of service as far as possible over the whole body of jurors, *Hamilton* 110–117. 179–187.

Conclusion of the Committee that the sheriff should be required to distribute the burden of service fairly and impartially; course to be adopted for this purpose, *Rep.* iii.

See also *Alphabetical Selection. High Sheriffs. Monaghan. Qualifications of Jurors.*

Sligo. Satisfactory verdicts generally in petty larceny cases at quarter sessions in Sligo; exceptions, however, to this rule, *Hamilton* 9. 46, 47——Very light character of the crime in Sligo, *ib.*——Very bad class of jurors in Sligo, *Ormsby* 590–593.

Special Jurors. Continued inferiority of special jurors, these having greatly deteriorated, *Hamilton* 25–27. 82, 83——Approval of Serjeant Armstrong's suggestion for returning to the old system of special jurors; that is in civil actions, *ib.* 26–28——Objection to special juries in criminal cases in Ireland, *ib.* 28. 160–164——Decided objection to special juries in every case, *Fergusson* 353.

Room for further improvements under the new Act as regards special jurors; expediency of adding certain classes of persons to the special jury list, *Johnson* 922, 923. 955–961——Decided opinion that the general panel, including special and common jurors, should be called at the sessions as it is at the assizes, *Leahy* 1650——Strong opinion in favour of abolishing the distinction between special and common jurors for sessions purposes, *Hamdill* 1886——Great object to be attained under the amended Act by getting as many special jurors as possible to sit with common jurors, *ib.* 1955–1957. 1962, 1963.

Strong approval of a power to obtain special juries in certain criminal cases; necessity of assimilating the English and Irish Acts in this particular, *Murphy* 2262. 2318. 2386, 2387——Suggestion that special jurors should serve at the quarter sessions as well as at the assizes, *J. Burke* 2442, 2443——Approval of having twelve special jurors at the quarter sessions sworn as grand jurors, the remainder being taken from the common jury list, *ib.* 2461——Approval of power to have special jurors in criminal cases, *Baron Deasy* 2572–2574.

See also *Dublin.*

SUMMONSES (ATTENDANCE OF JURORS):

Improvement if jurors were summoned by post instead of by sheriffs' bailiffs, 91, 92. 127——Consideration of objections to the service of jury summonses by post; disapproval of service by the police, *ib.* 235–239. 272–279——Efficient service by means of process servers, *Hamilton* 273–275; *West* 1024; *J. Burke* 2452–2455.

Objection to the process server or the post office as the means of serving summonses; recommended service through the summons server attached to the petty sessions court, *Fergusson* 312–317. 332, 333. 379–381. 418–423——Statement that in witness' district every one comes before the petty sessions sometime or other, so that the summons server of the court knows them all, *ib.* 418. 439–441——Strong approval of the system of serving summonses by means of the post; bribery avoided by this system, *Ormsby* 486–488. 548–550. 616–620. 741, 742.

Enormous increase in the expense of summoning jurors since the passing of the present Act, *Johnson* 789. 807——Expense of summoning jurors borne by sub-sheriff; discretionary power of the grand jury to present the extra expenses to the sub-sheriff, *ib.* 790–792——Examination as to the best means for summoning common jurors; expediency of employing the process servers upon this service, *ib.* 793–796. 924, 925. 972–975——Desirability of summoning grand and special jurors by means of registered letters; inexpediency of extending this system to common jurors, *ib.* 797–802. 924, 925. 939, 940——Remuneration of the bailiff for summoning common jurors fixed by statute at 6*d.* for summons; opinion that the remuneration should be increased, *ib.* 804–806. 973–975.

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Summonses (Attendance of Jurors)—continued.

Preference for personal service of summons over service by means of the post office, *West* 1022–1024——Belief that summoning the jurors by means of the post would be effectual in all but seven counties of Ireland; disapproval of the employment of petty sessions summons servers on this duty, *Leahy* 1310. 1419–1421——Advantage of employing the constabulary for summoning jurors; after the constabulary the quarter sessions process servers would be the best, *ib.* 1310, 1311. 1379–1387——Proposal that the chairman at quarter sessions should have the power of paying the expenses of officers for summoning jurors the same way as in civil cases; the payment not to exceed one guinea in any case, *ib.* 1427–1432——Decided approval of making the constabulary the machinery for serving the summonses, *Bolton* 1512.

Desirability of employing the constabulary for the service of summonses upon jurors; this would be more efficacious than service by means of registered letters, *Hamdill* 1896–1898. 1918–1922. 1954. 1973, 1974. 1989–1993——Objection to the present system of summoning jurors by one of the bailiffs, *ib.* 1901——Favourable opinion as to the manner in which the sub-sheriffs personally carry out the duty of summoning jurors, *ib.* 1915–1917——Opinion that the sheriff should have discretionary power to summon jurors, either by means of the post or of the constabulary, *ib.* 1921, 1922. 1954——Expediency of the judges framing general rules, from time to time, with regard to the summoning of jurors, *Hamdill* 1994, 1995; *Armstrong* 2077. 2080.

Suggestions with regard to the service of summonses upon jurors; emphatic objection to the employment of the constabulary upon this duty, *Armstrong* 2017–2020. 2035. 2039–2042. 2079, 2080——Inapplicability of the postal service in many parts of Ireland, *ib.* 2017. 2020. 2079.

Argument that the mode of summoning jurors by the post is eminently unsatisfactory; grounds for this conclusion, *Murphy* 2261——Expediency of utilising the constabulary as a means of summoning jurors in the country, *ib.*——Instance of a person being summoned to attend as a juror in two courts at once, *ib.* 2340–2342——Information as to the service of the summonses by the sheriff; irresponsibility of the sheriff in the event of this duty being neglected by the bailiff, *J. Burke* 2440, 2441. 2447–2451——Instances of jurors having paid to be served or not to be served, *Baron Deasy* 2581.

Resolution of the Committee that summonses should be served by the constabulary, but with power to the judges of assize, by order, to substitute service by post in any particular venue, *Rep.* iii.

See also *Service of Jurors.*

T.

Tipperary County. Low class from which the jurors in the county are taken; unfavourable contrast with the former jurors, *Bolton* 1467——Instances of unsatisfactory verdicts at the late assizes for Tipperary; determination on the part of the jurors not to bring in verdicts of guilty in cases of crime, *ib.* 1468–1475. 1488–1494——Opinion that such cases of failure of justice, as happened at the late assizes, would not have occurred under the old jury system, *ib.* 1475——Imperceptible improvement resulting in the county from the amendment Act of 1873, *ib.* 1476——Statement as to the numbers of the jury list before and after the passing of the Act, *ib.* 1477–1483——Impossibility of obtaining convictions for anything but common assaults, no matter how clear the evidence may be, *ib.* 1495——Out of sixteen acquittals at the last assizes at Clonmel, fourteen were as bad as possible, *ib.* 1571.

Further statement as to the want of intelligence and experience in the jurors summoned under the late Act; instance of a jury in 1873, upon which one man was drunk and another just returned from penal servitude, *Bolton* 1576–1591. 1605–1608——The special jurors in Tipperary are a very inferior class of men, *ib.* 1630–1635.

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Trial by Jury. Decided opinion as to the grave evils which would result from abolishing trial by jury; instances in which juries have returned proper verdicts in opposition to the judge's opinion, *Baron Deasy* 2538–2541.

U.

Ulster. Feeling among the disorderly and disaffected classes in the north of Ireland, but not among the orderly classes, that the jury panels have been partially framed; examination hereon to the effect that witness does not impute disaffection to the bulk of the Roman Catholic population in Ulster, *Hamilton* 192–195. 202–211.

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Upper Classes. Disinclination on the part of the country gentlemen to serve upon juries under Lord O'Hagan's Act, *Baron Deasy* 2516–2519.

See also *Landowners.* *Qualifications of Jurors.*

V.

Valuation of Property. Information relative to the qualification for jurors, as based upon the valuation of property; the rate book being copied from the valuation list, *Greene* 2627, 2628——Rules by which a distinction is drawn between villages and towns; where there are more than 500 inhabitants the place is called a town, *ib.* 2629–2632. 2636, 2637——Definition of the boundaries of a village, and of the means by which arrived at, *ib.* 2633–2635.

Verdicts. Reasons for the extraordinary verdicts sometimes given by juries; fear of convicting is occasionally the cause, *Leahy* 1318——Instances of extraordinary verdicts as the result of the want of intelligence on the part of jurors, *Boyd* 1811, 1812. 1814–1818——Argument that differences of opinion on the part of jurymen cannot be obviated by legislation, *Armstrong* 2005——Disagreements of juries are quite exceptional in Ireland, unless political matters interfere, *ib.* 2026——Great moral effect produced in Ireland by a verdict found by jurors against a prisoner in their own rank of life, *ib.* 2044——Description of the process which is gone through when the verdict is set aside on account of its being contrary to the evidence; right of either party to apply to change the venue, *ib.* 2052–2060.

Case of a man who, in shooting at another, had his hand blown off, and, notwithstanding complete proof of guilt, was acquitted, *Murphy* 2241, 2242——Rarity of unjust convictions in the south of Ireland, *ib.* 2336.

Evidence relative to some extraordinary verdicts found by juries in Cork on the home circuit, in Westmeath, &c., *Baron Deasy* 2482, 2483. 2489, 2490. 2563–2570——Instance in which, after sentence was passed on a prisoner, the jury intimated that they did not agree to a conviction, *ib.* 2482, 2483——Dissent from the evidence given by Serjeant Armstrong as to the absence of disagreements of juries, and of unsatisfactory verdicts, under the amended Act; reference more especially to the result in Dublin, *ib.* 2535. 2537. 2550–2553.

See also *Agrarian Outrages.* *Antrim.* *Cork County.* *Intimidation.* *Limerick.* *Munster Circuit.* *Political or Party Feeling.* *Qualifications of Jurors.* *Sligo.* *Tipperary County.*

View Juries. Approval of the court having the power, in criminal cases, "to order a view;" instance at the last Limerick assizes in which an order to view the premises would have been of great importance, *De Moleyns* 1164–1166.

Resolution of the Committee that the jury should have power, in criminal as well as in civil cases, to order a view, *Rep.* iv.

W.

West, Henry, Q.C. (Analysis of his Evidence.)—Has been chairman for the county of Wexford and other counties, and has been for more than twenty-five years Crown Counsel on the Connaught circuit, 1001–1004——Approval of the change effected by Lord O'Hagan's Act, as regards the area of qualification of jurors, 1005–1008——Statement with reference to the trial of Barrett for shooting at Mr. Lambert; conclusion from the result of this trial, that scarcely a juror in Dublin was qualified, 1005–1007——Desirability of extending the area of service, so as to embrace all those persons who are fit to serve on juries, 1008.

Questionable expediency of raising the rating qualification; rating is not the only test of a juror's competency, 1009, 1010——Disapproval of the exemptions included in the Act; the age should be extended, 1011, 1012——Importance of Irish legislation being similar to England in regard to juries; advisability of giving the sheriff discretionary power in selecting jurors, 1013–1016. 1025, 1026. 1029. 1044. 1075. 1050–1053. 1086–1088. 1100, 1101.

Decided opinion that the magistrates in petty sessions are the best tribunal for the revision of the juror's lists; large local knowledge possessed by the magistrates, 1017–1021. 1046. 1054–1075——Preference for personal service of summonses over service by means of the post office, 1022–1024——Opinion that the proper persons to serve summonses are the process servers in the civil courts, 1024——Remarks upon the abuse of challenges; decided opinion that in capital cases the system should remain, but that in ordinary felonies it should be abolished, 1028. 1030–1033. 1042, 1043. 1089–1093——More

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Considerable hardship on jurors in the county Wexford on account of being summoned from great distances; method of avoiding this, 1044, 1045——Objection to the alphabetical selection of jurors by the sheriff, 1087, 1088——Evil of the absence of discretionary power of selection by the sheriff, as shown by the fact that a man who is known to be dead must be summoned, 1102, 1103.

Wexford. Remarkable result of a trial of a gentleman for shooting at another in the hunting field in Wexford county, *West* 1036——Considerable hardship in the county through jurors being summoned from a great distance; means of remedying this evil, *ib.* 1044, 1045.